HAZARDOUS WASTE CONTAMINATION OF WATER RESOURCES

(EPA Enforcement of the Superfund Program)

(98-71)

HEARING

BEFORE THE

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

FEBRUARY 24, 1983

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HAZARDOUS WASTE CONTAMINATION OF WATER RESOURCES (EPA ENFORCEMENT OF THE SUPERFUND PROGRAM)

THURSDAY, FEBRUARY 24, 1983

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
Washington, DC.

The subcommittee met, pursuant to call, at 10:08 a.m., in room 2167, Rayburn House Office Building, Hon. Elliott H. Levitas (chairman of the subcommittee) presiding.

Mr. Levitas. The subcommittee will please come to order.

This morning we are continuing the subcommittee inquiry into the Environmental Protection Agency's handling of the Superfund legislation which was enacted by Congress in December 1980, to clean up abandoned wastesites across America.

Since early 1982 we have been publicly examining the problem of contamination of the Nation's ground and surface water resources by hazardous wastes that have been improperly and illegally disposed of in thousands of abandoned or inoperative sites across the country, many similar to Love Canal and Valley of the Dreams.

The toxins that run off from these wastesites render the drinking water for millions of Americans useless for decades and contaminate surface water so they become unfit for recreational and other uses.

These wastes are believed to be the cause of many chronic illnesses to those who are routinely exposed to them, including cancer and birth defects. Of particular concern to the subcommittee is whether the EPA is fully and adequately enforcing and implementing the provisions of the law, particularly with respect to obtaining or recovering the full costs of cleanup at a hazardous chemical dump and the companies responsible for them as the law requires.

To the extent that the EPA fails to do this the Superfund's resources are depleted and the ability of EPA to carry out the intent of the law, the cleaning up of these sites as expeditiously as possible so as to protect the public health and environment, that is diminished.

Last September 29, we had a meeting with Ms. Rita Lavelle, then Assistant Administrator of the EPA, and members of her staff in an effort to obtain some information on the Agency's handling of the hazardous waste cleanup program. Ms. Lavelle at that time was as I indicated the Assistant Administrator, but more importantly the one who was directly in charge of the hazardous waste cleanup program.

While we did not agree with the position which Ms. Lavelle stated concerning the policy at that time in response to our questions, she was fully forthcoming in explaining her position. Now that she has been relieved of that position in the Agency we have offered her the opportunity to discuss the matter in these proceedings.

At this point I want to note that Ms. Lavelle appeared before a committee of the U.S. Senate yesterday. While we do not propose to repeat that testimony today it may be that for purposes of background and for making the record there may be some duplication of that testimony, but we do intend to go into some other areas and to explore some other aspects of this matter based upon the specific information that Ms. Lavelle of course would have by virtue of her formerly serving as Assistant Administrator.

I would like to point out that the chairman of our full committee, Congressman Jim Howard of the State of New Jersey, last week initiated some very important and significant hearings on the questions relating to the integrity of the documents which have been subpoenaed by this committee and which are now the subject of an agreement between this committee and the administration. It could well be that some of the testimony today will continue along the lines that Chairman Howard has already opened up as a point of discussion.

The chairman is with us today, and I at this point would like to recognize the distinguished chairman of our full committee, if he has an opening statement.

Mr. **Howard**. Thank you very much, Mr. Chairman.

I have no formal opening statement. I just wish to congratulate you as the subcommittee chairman, your ranking member, Mr. Molinari, the members of the subcommittee and the staff for the way that they have conducted this investigation without sensationalism, and I wish to welcome Ms. Lavelle to the subcommittee and to thank her for making herself available so we together can see that the legislative and executive branches are both able to meet their responsibilities in a proper manner.

I wish to congratulate you.

Mr. **Levitas**. Thank you, Mr. Chairman, for those comments.

As we have discussed with you and with the members of the subcommittee, both majority and minority, we are not going to engage in any witch hunts, we are going to let the facts speak for themselves because we believe they will speak most loudly.

At this time I would inquire whether the ranking member of the subcommittee, Mr. Molinari, the gentleman from New York, has an opening statement.

Mr. **Molinari**. Yes, I do, Mr. Chairman.

Thank you.

Many of us including myself are extremely disturbed about the charges and countercharges surrounding the Hazardous Waste Cleanup Program.

As you know, Mr. Chairman, I was one of the persons that urged an investigation into the program early on and I am pleased that we are continuing in this Congress to seek out the truth. As we are painfully aware, the cost of hazardous wastesites in terms of human suffering has been unreasonably high. Yet, the benefits to be reaped from the laws on the books to bring a halt to toxic pollution have been slow in coming.

In my own district in New York we find toxic dumps and the typical health problems that result from them. I would venture to say that virtually every member of the House has similar sites that need to be taken care of.

To clean up these sites is of vital importance to us and I welcome these proceedings which should assist us in getting to the bottom of allegations of political manipulation, mismanagement, and criminal actions in connection with the Superfund.

The sooner we complete this task the better, so that we may quickly irradicate and control these dumps.

Mr. Chairman, I sincerely hope that the witnesses before us today will provide some answers that will prove or dispel the charges that have been made against the EPA. The health of many Americans is at stake.

Thank you, Mr. Chairman.

Mr. LEVITAS. Thank you, Mr. Molinari.

Does the ranking member of the full committee, Mr. Snyder, desire to make an opening statement?

Mr. SNYDER. Mr. Chairman, I have a statement. It endorses your and Mr. Molinari's efforts to get to the bottom of this matter and find out what the facts are.

I ask unanimous consent that it appear in the record at this point.

Mr. LEVITAS. Without objection, it will be entered in the record.

[The statement of Mr. Snyder follows:]

STATEMENT BY HON. GENE SNYDER

Thank you, Mr. Chairman: We are all well aware of the numerous media reports of the past several days which raise serious questions about the propriety of the conduct of certain officials and former employees of the Environmental Protection Agency.

When the chairman consulted with me on the advisability of holding a hearing on this matter, I indicated my concurrence. I am frankly quite concerned about allegations that have been made thus far.

Whether or not these charges are true, we on this committee still need to get the whole truth out. And that is basically what I hope we are here to begin to accomplish. The full committee has already taken testimony on two occasions and I understand the investigations subcommittee plans additional hearings.

I would say to the witness appearing before us today that this is your opportunity to provide this committee with the full story as to just what is going on at the EPA. The allegations that have been made are very serious and ultimately could affect the health and safety of millions of Americans. I personally will withhold judgment until I have all of the facts in this matter.

Thank you, Mr. Chairman.

Mr. LEVITAS. We appreciate your efforts in this matter, Mr. Snyder.

Does any other member of the subcommittee desire to make an opening statement at this time?

If not, then we will proceed with hearing testimony from Ms. Lavelle, and she is accompanied by her attorneys.

At this time, Ms. Lavelle, as is our practice—I want you to understand we are not singling you out for special treatment—all testimony before this subcommittee is taken under oath. If you would rise and let me administer the oath.

[Witness sworn.]

Mr. LEVITAS. Thank you, Ms. Lavelle. I want to take this opportunity to welcome you before this subcommittee.

As I have indicated we have previously met on matters dealing with the Superfund Program and in light of recent events it is obvious that your perception and your testimony is critical for all of us to have a full understanding at least so far as this part of the picture is concerned.

We welcome you here today and you may proceed as you desire.

TESTIMONY OF RITA M. LAVELLE, FORMER ASSISTANT ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY MARK BIERBOWER, COUNSEL, AND JAMES BIERBOWER, COUNSEL

Ms. LAVELLE. Mr. Chairman, thank you.

I would like to introduce the gentlemen with me. On my right is James Bierbower and on my left is Mark Bierbower.

Mr. LEVITAS. We welcome you gentlemen.

Ms. LAVELLE. Thank you.

I very much appreciate this opportunity to appear this morning and would like to congratulate this subcommittee on its nonsensational in-depth examination of this issue. I plan to stay today and be available in any manner you want to answer any questions you might have.

The EPA is a good agency, it has a good record and a very serious assignment in protecting human health and the environment. It is very important that we get the Agency back on the road to do the job that we all wanted to do.

The Environmental Protection Agency is engulfed in an escalating crisis of name-calling, rumor, criticism, charges and countercharges. The impact of this hasty and disorganized attack on the agency has been to weaken or destroy much of the significant and effective work accomplished in our national effort to clean up the environment and make the United States a clean, safe place to live and work.

The time has come for a calm and collective approach to prevail. It is imperative that all of us begin to work together again to recapture and maintain our bipartisan environmental consensus.

The Subcommittee on Investigations and Oversight of the House Committee on Public Works and Transportation has assumed a leading role in the investigation and review of environmental programs and policies. Your subcommittee has undertaken to examine the implementation and management of some of those programs and policies at EPA. As Assistant Administrator at EPA, I endeavored to provide my complete cooperation to your subcommittee. I welcome your inquiry, and I appreciate the opportunity to testify before you this morning.

As Assistant Administrator, I was in charge of administering a most important program at EPA. I was appointed by the President and confirmed by the Senate to undertake the task of administering two significant programs: Resource Conservation and Recovery Act or RCRA as we call it, and Superfund.

My job at EPA was to ensure the improper handling of hazardous waste became a closed chapter in our Nation's history. My responsibilities included the job of cleaning up more than 400 of the most hazardous wastesites in this country, as well as ensuring that new ones would not occur. I was responsible for development and implementation of regulations affecting more than 65,000 generators, transporters, and disposers. I also was in charge of emergency actions caused by spills and other accidents.

Throughout my 10 months at EPA, I was sensitive to the public trust placed in me. As Assistant Administrator, I did my best to meet my responsibilities. My record is a good one and I am proud of it. I made tough decisions and I stand behind them. I can defend the actions I have taken, and I am willing and anxious to do so this morning.

First, I want to lay to rest the suspicions that there was anything sinister or underhanded concerning the termination of my appointment. I have done nothing wrong. I have nothing to hide.

I voluntarily turned over my 1982 appointment calendars to the Senate Environmental and Public Works Committee with the knowledge that my calendars would be made fully available to other congressional committees and to the general public. All other records concerning my EPA work have been held by the Agency.

I have not had the opportunity to examine my records for purposes of preparing for today's hearing. I have no briefing papers or records to aid my testimony, but I am prepared to testify truthfully to the best of my recollection.

First, I would like to provide some information concerning my background and the qualifications which the Senate thoroughly reviewed prior to confirming my appointment as Assistant Administrator. I was born in Portsmouth, VA, and raised in Pasadena, CA, I attended College of the Holy Name in Oakland, CA, and graduated in 1969 with a B.A. in biology and mathematics, and a minor in chemistry. I then went to work for President Reagan, who was Governor of California.

During my experience with Governor Reagan, I worked for the California Department of Consumer Affairs. I was in charge of consumer education. Then I worked for Continental Chemical Co. in Sacramento. I subsequently worked for Aerojet General Corp. for 3½ years as director of communications for two of their five firms in Sacramento. During my employment with Aerojet General, I also attended business school at Pepperdine University, where I received an M.B.A. at Pepperdine in 1980 and graduated with cum laude honors.

I was appointed Assistant Administrator on April 1, 1982. What was the situation when I arrived?

We had intelligent senior managers who were experienced and committed, but undirected.

We had a growing barrier between EPA and business, with the cleanup technologies and those who needed to challenge them at EPA.

We had a group of State directors who were seeking active responsibility for their own programs, but were faced with an unpredictable moving target of regulatory approach.

We were faced with hundreds of responsible parties which are as this subcommittee knows, the disposers as defined under the SF law who were busy hiring attorneys to fight to the bitter end.

An open-ended universe of potential sites, with no program to curtail new ones from occurring.

On the whole, I believe we made considerable progress in the implementation of Superfund and RCRA, and I would like to briefly discuss this record.

With the 418 site announcement in December, action was under way at 250 sites. Of the $265 million in 1982 we had obligated $221 million or 83 percent and we were well on our way with the 1983 money.

We had according to the best of my recollection as I left, 98 sites where emergency and surface cleanup has been completed; 71 sites where long-term work is underway.

We have issued 1760 notice letters for 106 sites. This is a 24-fold increase over 1981. There were ongoing negotiations at 56 sites, 39 sites had completed negotiations.

We achieved private party cleanup for $121 million savings to taxpayers.

Additionally we had cost recovery for $3.6 million, and assisted States in recovering well over $17 million.

In the RCRA Program which I call the Hazardous Waste Problem Prevention Program, we had long overdue regulations finally in place. What were some of these regulations?

Uniform transportation requirements for 13,000 transporters of hazardous wastes. Financial responsibility and liability requirements for 9,100 treatment, storage, and disposal satellites. We had incinerator standards. And we had the long overdue land disposal storage and treatment standards.

We had just issued guidance for final authorization for States expecting to come in and run their own program. We expected 45 by the end of 1984, already we had 35 States in phase I, 8 in phase II, with many more coming in for authorization.

Finally we were well on our way to writing the permit guidance so necessary for these facilities.

Enforcement was also a great deal stronger. By the end of 1982 compliance inspections had been completed at almost 1,200 facilities, a 64-percent increase of 1981.

Warning letters had been issued to over 982 of them, for an increase of 106 letters.

Complaints against these warning letters, 226, a 44-percent increase.

We had issued 153 final orders, and assessed $1.6 million in penalties.

We were anticipating a major increase in activities with the requirements for ground-water monitoring reports and new permit call insurance. In short, the hazardous waste team was and is an outstanding example of what can happen when you properly focus talent.

I would like to touch briefly on several specific areas of inquiry before I submit to your questions.

On Friday, February 4, I was attending EPA-related meetings with Members of the House. Upon returning to EPA at 4:30 p.m., I went to the Administrator's offices on the 12th floor for an appointment. There I was handed a press release announcing that I had resigned and was returning to my home State of California. I was also asked to submit a letter of resignation.

I had no warning whatsoever that my resignation would be demanded. I was shocked. I asked for reasons. I was told that an alleged memo was the basis for my dismissal. No opportunity was afforded to me for explanation or for a hearing. I was simply told that if I did not resign, I would be fired. The Agency issued a press release announcing that I had resigned and was returning to California. Sunday my offices were placed under armed guard, with my records remaining at the Agency.

Unfounded charges had been made against me and I had been abruptly told to resign or be fired. I thought that I had done a good job administering an important and difficult program. I concluded that my resignation would create the false impression that I had done something wrong or had something to hide. Accordingly, I refused to resign. Instead, I sought an opportunity to tell my side of whatever stories were circulating.

The only reason given to me as an explanation for my sudden and unexpected firing was the alleged memo, which has been falsely attributed to me. The alleged memo has achieved notoriety in the press. On close examination, it can be ascertained that this alleged memo was placed on blank paper, bears no signature, gives no indication of who wrote it, or to whom it is addressed, and had no date. The alleged memo does, however, represent a purloined readout from a disc which had an index reading "memo to W.H."

The reaction to this alleged memo is characteristic of the manner in which the current EPA crisis has exploded with hysterical and unfounded charges and attacks.

The Administrator and staff at EPA were quick to assume—because the alleged memo was contained in the memory of a typewriter within my office—that I was the author. It was equally convenient to assume that the initials "W.H." meant that this was some underhanded attack directed for consumption by the White House.

I can understand the difficulties my refusal to resign caused the White House. Obviously, the White House felt obliged to support the Administrator. However, I thought my resignation would be an admission of wrongdoing. My appointment was terminated on Monday, February 7, without explanation or opportunity for hearing.

If my resignation had been requested in a more civil fashion, mindful of my right to tell my side of the story, I would have had no trouble submitting my signed resignation. However, in the face of an ultimatum to resign or be fired immediately, I chose to stand my ground.

I do not contend that I was fired solely because of the alleged memo. I am only saying that this was the reason offered for my dismissal. As the members of this subcommittee know, environmental programs are replete with opportunities for differences of opinion regarding implementation of programs and policy. Administration of Superfund and RCRA was no exception. Policy differences and disputes existed, and I anticipate that you will inquire into several policy areas.

I want to say at the outset that both RCRA and Superfund are on track, and that the intent of Congress is in the process of full implementation. To my knowledge, there have been no policy decisions to go slow. Instead, a concerted effort has been made to implement the legislative intent of Congress.

With regard to my policy decisions, I have made every effort to utilize all of the tools enacted by Congress to undertake the job of cleaning up the hundreds of hazardous wastesites targeted by the law. My approach was a pragmatic one. I utilized what was available to me, including administrative orders, consent orders, negotiated settlements, civil litigation, and criminal litigation.

It is important to underscore the fact that my job was to clean up hundreds of the worst toxic wastesites. In these worst cases, barrels and other containers of waste are corroded and leaking. The hazards are present; they exist here and now. They are a clear and present danger. It was my job to protect the public by getting these most hazardous sites cleaned up as quickly as possible.

Basically, two enforcement approaches are available in a number of combinations to accomplish cleanup. One is to litigate with the disposers. This requires EPA to go in and build its case, to prove that a company disposed at a site, and then bring an enforcement action. Many companies are prepared to fight EPA in the courts and to litigate the extent of their involvement.

Under this scenario, it would take 5 to 10 years to determine to what extent a company was responsible. Meanwhile, drums and containers are corroding and leaking. Citizens are alarmed and worried about their towns and the safety of their drinking water. Something must be done quickly.

My response was to negotiate with those responsible. Many business concerns were reluctant at first. Many preferred to fight EPA and litigate weak cases over who was responsible.

What are the results? We have reached settlements which are producing results—clean up right now.

Some have accused me of making sweetheart deals with industry. There has been no concrete evidence of any sweetheart deal. There is no such evidence.

Mr. Chairman, I hope that today we will be able to put all the charges on the table. Let's discuss when, where and what.

All settlements have undergone rigorous examination. For example, the Seymour settlement was approved by a U.S. district court. My job was to get results. To do this, I had to negotiate. I stand behind my actions and the results achieved.

Concerning my appointment calendars, I have been accused of lunching and dining with industry representatives and never meeting with representatives of environmental groups. This accusation has also been cited as circumstantial evidence that I made sweetheart deals with industry.

In the first place, the many meetings with industry representatives, as recorded in my calendars, are fully consistent with my purposeful strategy of negotiating agreements with industry to get the worst toxic wastesites cleaned up and to protect the public and from a real and present danger. The record will show—and I fully anticipate that I will be questioned in detail concerning the settlements I negotiated—that no single company received what can be termed favorable treatment.

It has been alleged that I never met with environmental groups. I point out that my environmental constituency was a unique combination. It included those citizens who must live in towns and cities near toxic wastesites. My calendars demonstrate that I was frequently on the road visiting these sites, assessing the extent and nature of the hazards, the methods and cost of cleanup, as well as the threat and solutions for the citizens.

I made myself available to the people who were most affected by the hazardous wastesites. I conducted on-site inspections and listened carefully to the public. It also included state directors, who must implement regulations to ensure safe handling of hazardous waste.

There have also been accusations that cleanup of certain sites were placed on an election-track or were delayed or hastened with political considerations in mind. I never participated in such activity.

Much has also been said about the existence of paper shredders at EPA. I can only speak for my office, I certainly never shredded any papers or other documents. I have never used a shredder. So as far as I know, no one on my staff ever shredded or otherwise attempted to destroy or conceal any documents or other records during my tenure at EPA.

Finally, with regard to documents and records subpoenaed by congressional committees, I never advocated withholding any documents from the Congress.

The hazardous waste program is a lightning rod at EPA. It is a good program and a strong program. It is achieving the results this committee intended. I plan to continue to support the program, and to support EPA's thousands of dedicated employees all over America.

Thank you very much, Mr. Chairman.

[The statement of Ms. Lavelle follows:]

STATEMENT BY RITA M. LAVELLE BEFORE THE SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT, COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, U.S. HOUSE OF REPRESENTATIVES, FEBRUARY 24, 1983

The Environmental Protection Agency is engulfed in an escalating crisis of name-calling, rumor, criticism, charges and countercharges. The impact of this hasty and disorganized attack on the Agency has been to weaken or destroy much of the significant and effective work accomplished in our national effort to clean up the environment and make the United States a clean, safe place to live and work.

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My job at EPA was to ensure that improper handling of hazardous waste became a closed chapter in our Nation's history. My responsibilities included the job of cleaning up more than 400 of the most hazardous waste sites in this country, as well as ensuring that new ones would not occur. I was responsible for development and implementation of regulations affecting more than 65,000 generators, transporters, and disposers. I also was in charge of emergency actions caused by spills and other accidents.

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We had intelligent senior managers who were experienced and committed, but undirected.

We had a growing barrier between EPA and business, with the cleanup technologies and those who needed to challenge them at EPA.

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The reaction to this alleged memo is characteristic of the manner in which the current EPA crisis has exploded with hysterical and unfounded charges and attacks.

The Administrator and staff at EPA were quick to assume—because the alleged memo was contained in the memory of a typewriter within my office—that I was the author. It was equally convenient to assume that the initials W.H. meant that this was some underhanded attack directed for consumption by the White House.

The truth of the matter is that one of my assistants drafted the so-called memo in response to my request that talking points be developed for policy discussions concerning Superfund. I had neither read nor approved these talking points prior to the time they were leaked by someone and brought to the attention of the Administrator. It is my understanding that the initials W.H. actually refer to Mr. William Hedeman, who was Superfund Office Director at EPA. My boss at EPA obviously thought the initials meant the White House.

I can understand the difficulties my refusal to resign caused the White House. Obviously, the White House felt obliged to support the Administrator. However, I thought my resignation would be an admission of wrongdoing. My appointment was terminated on Monday, February 7, without explanation or opportunity for hearing.

If my resignation had been requested in a more civil fashion, mindful of my right to tell my side of the story, I would have had no trouble submitting my signed resignation. However, in the face of an ultimatum to resign or be fired immediately, I chose to stand my ground.

I do not contend that I was fired solely because of the alleged memo. I am only saying that this was the reason offered for my dismissal. As the members of this subcommittee know, environmental programs are replete with opportunities for differences of opinion regarding implementation of programs and policy. Administration of Superfund and RCRA was no exception. Policy differences and disputes existed, and I anticipate that you will inquire into several policy areas.

I want to say at the outset that both RCRA and Superfund are on track, and that the intent of Congress is in the process of full implementation. To my knowledge, there have been no policy decisions to go slow. Instead, a concerted effort has been made to implement the legislative intent of Congress.

With regard to my policy decisions, I have made every effort to utilize all of the tools enacted by Congress to undertake the job of cleaning up the hundreds of hazardous waste sites targeted by the law. My approach was a pragmatic one. I utilized what was available to me, including administrative orders, consent orders, negotiated settlements, civil litigation, and criminal litigation.

It is important to underscore the fact that my job was to clean up hundreds of the worst toxic waste sites. In these worst cases, barrels and other containers of waste are corroded and leaking. The hazards are present; they exist here and now. They are a clear and present danger. It was my job to protect the public by getting these most hazardous sites cleaned up as quickly as possible.

Basically, two enforcement approaches are available in a number of combinations to accomplish clean up. One is to litigate with the disposers. This requires EPA go in and build its case, to prove that a company disposed at a site, and then bring an enforcement action. Many companies are prepared to fight EPA in the courts and to litigate the extent of their involvement. Under this scenario, it would take 5 to 10 years to determine to what extent a company was responsible. Meanwhile, drums and containers are corroding and leaking. Citizens are alarmed and worried about their towns and the safety of their drinking water. Something must be done quickly.

My response was to negotiate with those responsible. Many business concerns were reluctant at first. Many preferred to fight EPA and litigate weak cases over who was responsible.

What are the results? We have reached settlements which are producing results—clean up right now.

Some have accused me of making sweetheart deals with industry. There has been no concrete evidence of any sweetheart deal. There is no such evidence. All settlements have undergone rigorous examination. For example, the *Seymour* settlement was approved by a U.S. District Court. My job was to get results. To do this, I had to negotiate. I stand behind my actions and the results achieved.

Concerning my appointment calendars, I have been accused of lunching and dining with industry representatives and never meeting with representatives of environmental groups. This accusation has also been cited as circumstantial evidence that I made sweetheart deals with industry.

In the first place, the many meetings with industry representatives, as recorded in my calendars, are fully consistent with my purposeful strategy of negotiating agreements with industry to get worst toxic waste sites cleaned up and to protect the public from a real and present danger. The record will show—and I fully anticipate that I will be questioned in detail concerning the settlements I negotiated—that no single company received what can be termed favorable treatment.

It has been alleged that I never met with environmental groups. I point out that my environmental constituency was a unique combination. It included those citizens who must live in towns and cities near toxic waste sites. My calendars demonstrate that I was frequently on the road visiting these sites, assessing the extent and nature of the hazards, the methods and cost of clean-up, as well as the threat and solutions for the citizens. I made myself available to the people who were most affected by the hazardous waste sites. I conducted on-site inspections and listened carefully to the public. It also included State directors, who must implement regulations to ensure safe handling of hazardous waste.

There have also been accusations that clean-up of certain sites were placed on an election-track or were delayed or hastened with political consideration in mind. I never participated in such activity.

Much has also been said about the existence of paper shredders at EPA. I can only speak for my office, I certainly never shredded any papers or other documents. I have never used a shredder. So far as I know, no one on my staff ever shredded or otherwise attempted to destroy or conceal any documents or any other records during my tenure at EPA.

Finally, with regard to documents and records subpoenaed by congressional committees, I never advocated withholding any documents from the Congress.

The hazardous waste program is a lightning rod at EPA. It is a good program and a strong program. It is achieving the results this committee intended. I plan to continue to support the program, and to support EPA's thousands of dedicated employees all over America.

Mr. **Levitas**. Thank you very much, Ms. Lavelle.

Let me indicate that it will be my purpose just by way of procedure to apply a flexible 5-minute rule so that each member will have ample time to ask questions and we can go around and I expect that since there will be a lot of background that will be developed in the early going I expect that we will make several tours around the committee members before we have completed our work.

Ms. Lavelle, let me get into one area that I think is important to clarify at the outset. That is, where did you receive your instructions or directions for policy in implementing the Superfund Program? Mrs. Gorsuch-Burford has been quoted as saying the Superfund was the most important new program at the Environmental Protection Agency and you were the Assistant Administrator in charge of that program.

Where did you get your policy directions within the Agency or outside the Agency insofar as how you were supposed to proceed in carrying out this program?

Ms. **Lavelle**. Basically, Mr. Chairman, I was given broad guidance when I first came into the position as Assistant Administrator that it was a managerial challenge. Our mission was to clean up these sites. I came back to the Administrator with options on how we could proceed from a management viewpoint as well as some of the policy considerations in terms of interagency relationships, for instance, with the Department of the Interior, HHS, otherwise, but basically it was a review of, for instance, the national contingency plan which was our major building block on how we were going to proceed managerially as well as an in-depth review in anticipation of our budget submission for 1984 on how we were going to manage this approach.

That included a number of policy considerations and directions.

Mr. **Levitas**. Did those directions come from Mrs. Gorsuch as she then was or from others in the Agency? Where did those directions come from?

Ms. **Lavelle**. It was basically as senior manager I presented policy points to her with recommendations. She reviewed these and then would set policy.

Mr. **Levitas**. What about from the White House? Were there any policy directions given to you from any officials in the White House at any time?

Ms. **Lavelle**. Not to me, sir, no.

Mr. **Levitas**. What was the nature of your access to the Administrator in discussing this most important new program?

Ms. **Lavelle**. There were no scheduled formal meetings, in other words there were no formal staff meetings on a weekly basis or formal reviews.

However, I had pretty good access to the Administrator for informal reviews as these policy decisions would come up.

We also were afforded a full day review on a Saturday in early September, I cannot find it on my calendars but I know it was before September 21, to review the entire management approach which embodied those policies that she had been reviewing prior to September.

Mr. **Levitas**. Did you have a direct telephone line, for example, to the Administrator if you needed to get some information or guidance, could you just pick up the phone and call up?

Ms. **Lavelle**. We called it the hotline and I had one in my office, I am going to say it was installed about 3 months ago.

Mr. **Levitas**. You were quoted in the press based on a press conference you had a couple of weeks ago as saying that you had been trying for about 2 months to get a meeting with the Administrator to talk about the Superfund Program and you were trying to make arrangements for that through John Daniel and that for whatever reason you had not been able to arrange that meeting.

Is that correct; and if so, don't you find that sort of highly unusual that you would have difficulty as Assistant Administrator speaking to the Administrator to get guidance on this most important new program?

Ms. **Lavelle**. Mr. Daniel was assuming, especially in the last, I am going to say 5 to 6 months, more and more of a role of acting as an intermediary between myself and the Administrator in terms of reporting both ways. I would take policy decisions to him and it would be reported back.

There just was not enough time in the Administrator's schedule to have in-person reviews as much as we had when I first came on the job.

Mr. **Levitas**. But is it correct that you tried for 2 months to get that meeting with her to talk about Superfund?

Ms. **Lavelle**. Yes; and I think it should be couched in terms of Mr. Daniel and I—OK, there was a Superfund—the problem was a management problem, senior management problem, in terms of tension between Mr. Perry's shop and my shop on a number of issues, a number of approaches, a number of policy calls.

I communicated this to Mr. Daniel and said that I think we need the Administrator in on this to work it out with Bob and myself.

The meeting was kept being put off by Mr. Daniel; it wasn't the right time to bring it up; maybe we could work it out at a lower level with him, the bottom line it was anticipated it would be right after January, New Year's and then, of course, Mrs. Burford was ill, in the hospital, so the meeting did not occur.

Mr. **Levitas**. What I am getting at, and maybe you can help us understand, you had a hotline that went directly to the Administrator's office. You were in charge of the most important new program in the Agency. There were obviously problems which were developing, whether they were in the administration of the program or the relations between your office and that of Mr. Perry.

They, obviously, were a concern to you because you wanted to get something resolved and yet for 2 months you are not able to either pick up the phone and call Mrs. Burford or sit down and talk with her on a Saturday, or Monday, or whenever.

Can you shed any light on why this apparent impediment for getting communication on an extremely important matter existed? What I am getting at, were you being shut out by that time already?

Ms. **Lavelle**. I might have been, Mr. Chairman, looking back on it.

I, definitely, was not communicating in person with the Administrator; I was communicating with her chief of staff who was then, I thought, communicating with the Administrator.

Mr. **Levitas**. Is Mr. Daniel a Presidential appointee?

Ms. **Lavelle**. As I understand it, he is—I don't know if he has political clearance.

Mr. **Levitas**. Let me just get back into one thing again just simply by way of background, and then I will recognize other members of the committee and get to my questions later. I think it would be helpful to all of us if we got some idea of how you happened to come into this job.

My understanding is that you were officially sworn in on April 1, 1982.

Ms. **Lavelle**. Yes, sir.

Mr. **Levitas**. And could you sort of describe how it was? Were you sought out by the administration, did you indicate an interest; once you got involved in the process who interviewed you, where were these interviews held, did you speak to Mrs. Gorsuch/Burford, did you speak to others working for or consulting with her at the time? How did you go about the job? Just by way of background, how did you get into it?

Ms. **Lavelle**. Basically, I was working for a company in Sacramento at the time, Aerojet General; I was in Washington on a defense, for a defense show coordinating work for the company; I met with some of my friends who are back here in various administrative posts, none of them in the White House but various posts, on a social basis.

I was verbalizing problems that I had with the Superfund and RCRA Program implementation. The comment was made, well, there is no assistant administrator over there; why don't you try out for the post and it was kind of one of these processes. Someone recommended me to Mr. Sanderson, who gave me an in-depth interview. I believe to the best of my recollection Mr. Daniel also interviewed me.

Mr. LEVITAS. We know who Mr. Daniel is, we have identified him.

Just for the record, who is Mr. Sanderson that you had this in-depth interview with and approximately when did that occur?

Ms. LAVELLE. Let's see, November is when I assumed the post; I am going to say it was probably early September.

Mr. LEVITAS. Of 1981?

Ms. LAVELLE. Yes, sir.

Mr. LEVITAS. You met with Mr. Sanderson and he was doing what at the time?

Ms. LAVELLE. He was a consultant to the Administrator but he was the one that the Administrator was going to send up as the Assistant Administrator for Policy, so he was known as the third person in charge at the Agency. The first being the Administrator, second Dr. Hernandez, and third Mr. Sanderson. He interviewed me in depth. I subsequently—I am going to say like 4 or 5 weeks later, was invited back for an interview with the Administrator. Mrs. Gorsuch/Burford gave me an in-depth interview and offered me the job that evening.

Mr. LEVITAS. Was there any suggestion there had to be White House clearance?

Ms. LAVELLE. She said, of course, I am sure you can get political clearance, and yes, I got political clearance; it took about 1 hour with my record.

Mr. LEVITAS. Did you meet with anybody at the White House to discuss your clearance?

Ms. LAVELLE. Mr. Joe Ryan who was in charge and still is in charge of personnel matters for EPA.

Mr. LEVITAS. Anyone else?

Mr. Fuller?

Ms. LAVELLE. Oh, no one else. Whatever process Mr. Ryan employed, quite a few people over there knew me from California, so it just took a matter of moments and I was cleared politically.

Mr. LEVITAS. As I understand it, you were then employed as a consultant to the Agency pending your confirmation?

Ms. LAVELLE. That occurred November 15. I cut off all of my financial relationships with my prior employer and came back as a consultant to the Agency.

Mr. LEVITAS. Thank you very much. I have a number of other questions but at this time I would like to recognize the gentleman from New York, the ranking member, Mr. Molinari.

Mr. MOLINARI. Thank you, Mr. Chairman.

Ms. Lavelle, to clear up some of the questions concerning your hiring, were there newspaper reports which allegedly quoted you as saying that Ed Meese was your rabbi?

Ms. **Lavelle**. I think it was "godfather."

Mr. **Molinari**. Further, there were reports that Mr. Meese said he hardly knew you. I believe he said he only met you on one occasion. Could you tell us which version is true?

Ms. **Lavelle**. I think the quote was, "godfather." But——

Mr. **Molinari**. It depends on one's background.

Mr. **Levitas**. He was being deferential to the chairman of the committee.

Ms. **Lavelle**. That was a—I didn't make such a statement. It was a statement that was made probably because Mr. Meese very nicely came over when I was sworn in in the ceremony and held the Bible and met with a lot of people in our program which was——

Mr. **Molinari**. Did you know Mr. Meese before you were hired?

Ms. **Lavelle**. Oh, yes, sir. I knew him in 1969 when I was hired for the then-Governor Reagan's staff.

Mr. **Molinari**. Did Mr. Meese to your knowledge make any phone calls on your behalf to try to get you the position that you wanted?

Ms. **Lavelle**. No, and that would not be his style.

Mr. **Molinari**. I am not interested in style, I am interested in knowing if he made any phone calls.

Ms. **Lavelle**. No, not to my knowledge.

Mr. **Molinari**. Were there any other calls of recommendation to people who might have a hand in hiring you?

Ms. **Lavelle**. There might have been to Mrs. Gorsuch/Burford, people in the White House who I had known in the past knew that the position was being sought.

Mr. **Molinari**. Would you mind identifying some of these indviduals?

Ms. **Lavelle**. Oh, Mr. Deaver; he may have made a call over. I am not sure.

Mr. **Molinari**. Traditionally, to try to get a job such as yours, it generally takes quite a bit of effort and I think it is important to know who had a hand in helping you get that position. Do you know if there were any people from some of your prior enterprises including anybody from the chemical industry or any industry for that matter that put calls into the White House or other place to try to help you get the job?

Ms. **Lavelle**. No, sir, it was totally a personal communication between myself and people who I knew in the White House that I was seeking it, but——

Mr. **Molinari**. To whom did you place those calls?

Ms. **Lavelle**. To Mr. Meese's office, to Mr. Deaver, Helene von Damm, that is the best of my recollection. I would have to think of some more.

Mr. **Molinari**. Do you have any information that Mrs. Burford didn't want to hire you? Was there any reluctance in hiring you?

Ms. **Lavelle**. Not really. When Mrs. Gorsuch/Burford introduced me she asked some very good questions, I am going to say it was about a 2- or 2½-hour interview and she offered me the job that evening.

Mr. Molinari. Had Mrs. von Damm any role in helping you get the position?

Ms. Lavelle. Not that I am aware of. I have seen that allegation in the press but not that I am aware of.

Mr. Molinari. Did you ever call Mrs. von Damm and say: "I need your help? Could you put a call in for me?"

Ms. Lavelle. To the best of my recollection, I called and notified them that I was applying for a position with the EPA and I would hope that if the opportunity arose they would put a good word in for me. But I don't know that such a call was then made to Mrs. Gorsuch/Burford or that any pressure was applied. I don't know the inner workings.

Mr. Molinari. Was there any consideration given to a different position for you at EPA, other than the one that you eventually got? Were you up for any other position within the Agency?

Ms. Lavelle. No, sir, that is the only one. That is the only one I ever wanted and that was the only one that was discussed with me.

Mr. Molinari. There was no conversation between you and anyone else concerning any other position?

Ms. Lavelle. No, sir.

Mr. Molinari. In your statement, Mrs. Lavelle, you talk about the escalating crisis of name calling, rumor, and criticism. Then you say the impact of this hasty and disorganized attack on the Agency weakens or destroys the impact of the work of the Agency.

Then you go on, starting on page 2, for several pages charging that you were denied access to your records, that your room was placed under guard, that you didn't have an opportunity to get your documents out to prepare for hearings.

This seems to be somewhat of a contradiction. In one case you seem to be criticizing those who find fault with EPA and in another part of your testimony you seem to be indicating indeed those who do find criticism with EPA are right in doing so.

I find that to be a contradiction. Can you clear that up for me?

Ms. Lavelle. Well, there is no contradiction with the facts. I don't have records and I wanted to put that on the record. I am testifying to the best of my recollection of everything.

Mr. Molinari. What records are you missing? What records did you want to get?

Ms. Lavelle. I have no records, period. I don't know what the questions are even to anticipate what records I would need.

Mr. Molinari. You did pick up your diary, did you not?

Ms. Lavelle. I did not. My chief of staff took a diary, personal—not a diary, my two appointment calendars, personal effects that they construed to be personal effects; Rita Lavelle took her purse and left.

Mr. Molinari. OK.

Ms. Lavelle. What was the question again, sir?

Mr. Molinari. You only took your purse and nothing else from your office following your dismissal?

Ms. Lavelle. Yes, sir.

Mr. Molinari. Did anybody else take any documents for you and give them to you or take them out of the office on your behalf?

Ms. LAVELLE. As far as I know—and this means that I have talked with people—it was all personal effects, photographs, personal things were in my possession.

Mr. MOLINARI. Any memoranda, any documents?

Ms. LAVELLE. No, sir; no documents. My two calendars.

Mr. MOLINARI. You said personal effects. Might that have been personal notes that you gave to other people or that you received from other people?

Ms. LAVELLE. Not from my office. I think they took some out of their office and they certainly—in fact, I think we have a history we could provide the committee.

Mr. BIERBOWER. May I assist?

Mr. MOLINARI. Surely.

Mr. BIERBOWER. One of her assistants, Mr. Wood, carried out a box about the size of one drawer of a file cabinet. It contains——

Mr. ROE. The gentleman will suspend for a moment if you are going to add testimony to the committee, we will have to swear you in, sir. The gentleman will rise.

[Witness sworn]

Mr. ROE. The gentleman will proceed.

Mr. BIERBOWER. Mr. Wood is preparing an inventory of this box. It contains sports equipment, a coffeemaker, and a number of miscellaneous things. I do not have the inventory yet, but I have asked him to prepare it.

Ms. LAVELLE. We will gladly give it to this committee.

Mr. MOLINARI. How can we be sure that there are no documents or papers involved?

Mr. BIERBOWER. I don't know how you can be sure——

Mr. MOLINARI. I think it is important that we have an inventory.

Ms. LAVELLE. Because I physically saw them after—in other words, I was over there at their house and there were no documents in there. They were personal effects but anticipating questions like this, the inventory I thought, was completed last night. Maybe we can provide it later today because we anticipated your questions.

Mr. MOLINARI. You looked through these items yourself which were the equivalent of a file drawer?

Ms. LAVELLE. I looked very quickly. I said we had better prepare an inventory.

Mr. MOLINARI. For the record, would you mind identifying who Mr. Wood was?

Ms. LAVELLE. Mr. Wood was my chief of staff.

Mr. MOLINARI. He took the items out at what point? Was it the same day you were fired?

Ms. LAVELLE. I don't believe so, but I am not sure.

Mr. MOLINARI. Did you make any attempt to get back into your office?

Ms. LAVELLE. No, sir.

Mr. MOLINARI. You didn't.

Ms. LAVELLE. I was in my apartment.

Mr. MOLINARI. On page 2 of your testimony you talked about your position and your responsibilities. You mentioned the number of sites that you worked on and you said that one of your functions would be to assure that new dumpsites would not occur.

Ms. **Lavelle**. Yes, sir.

Mr. **Molinari**. Would you mind telling the committee what action you took to ensure that no new sites would be created?

Ms. **Lavelle**. The action is the long overdue implementation of the Resource Conservation Recovery Act. There were no meaningful, substantial regulations on the book when we came in, when this administration came in. We worked hard with the employees to come up with such regulations and then I think I cited those in my testimony for you, some of them, on page 4 and page 5.

Mr. **Molinari**. You didn't take any new action?

Ms. **Lavelle**. Well, that is new action.

Mr. **Molinari**. Excuse me?

Ms. **Lavelle**. Those are regulations that should have been in place a long time ago.

Mr. **Molinari**. You were implementing what was supposed to have been done before?

Ms. **Lavelle**. Yes.

Mr. **Molinari**. Is that what you are saying?

Ms. **Lavelle**. Yes, sir.

Mr. **Molinari**. All right. You indicated in your statement today that you would have resigned if the resignation had been requested in a more civil fashion. Yet, you indicated in your statement that you didn't see any reason to resign because you felt that that would have been an admission that you did something wrong.

Under what circumstances would you have considered resigning? That seems to contradict the statement that you did nothing wrong; you had nothing to hide.

Ms. **Lavelle**. I guess a more civil fashion would have involved a discussion of the events that led to the request for resignation. I was not afforded the opportunity to discuss it. The discussion had been made. I guess I have to trust human nature and my experience that if I had done something wrong or if I was in any way hurting this administration I most certainly would have resigned, but that is how I define civil.

Mr. **Molinari**. Would it have taken wrongdoing on your part to get you to the point where you tender your resignation?

Ms. **Lavelle**. Or an explanation as to why—one that I could understand.

Mr. **Molinari**. Then you would have submitted a resignation?

Ms. **Lavelle**. Yes; I think I would have, yes.

Mr. **Molinari**. Don't you think the inference would have been that you didn't perform your job well?

Ms. **Lavelle**. That would be grounds for requesting the resignation, yes.

Mr. **Molinari**. But you were sure you didn't do anything wrong and that you did a good job. That is what you have been telling this committee.

Ms. **Lavelle**. Yes, sir.

Mr. **Molinari**. How could they then have framed the request for your resignation in a more civil fashion?

Ms. **Lavelle**. They could have based it on fact.

Mr. **Molinari**. Do you mean the facts were available and they just didn't use them, is that what you are telling us?

Ms. **Lavelle**. First of all, I performed extremely well as a manager in my interpretation. That was not cited. It was not my performance. It was—what was cited was the fact that I had supposedly lied, had not been a good team member and had kept book on my fellow political appointees and this memo, supposed memo was cited as the proof.

Now, (a) it wasn't true; but, (b) I didn't see——

Mr. **Molinari**. What wasn't true?

Ms. **Lavelle**. The whole argument.

Mr. **Molinari**. All of these allegations?

Ms. **Lavelle**. Yes, sir.

Mr. **Molinari**. OK.

Ms. **Lavelle**. The allegations were not true; I was not afforded an opportunity to discuss them; and more importantly, ethically, I had never done anything wrong to cause such an action, nor had my performance been so poor that it would have caused such an action.

Mr. **Molinari**. Let me conclude this round of questioning so we can go on to the next member by asking did the request for the resignation come as a shock or surprise to you?

Ms. **Lavelle**. Yes, sir; it most certainly did. In fact I was late because I was up on the Hill and I had no idea whatsoever it was coming.

Mr. **Molinari**. No warning of any nature?

Ms. **Lavelle**. No, sir.

Mr. **Molinari**. Was your relationship with Mrs. Burford and others in key positions a good one up to that point in time?

Ms. **Lavelle**. I had thought so, yes. I had commented to some people, the Administrator had been kind aloof with me lately, I thought, you know, I was sensing something, but there was absolutely no grounds or anything. I didn't know that I was not in good standing.

Mr. **Molinari**. Thank you, Ms. Lavelle. I will pass for now, Mr. Chairman.

Mr. **Roe** [presiding]. We thank the gentleman from New York.

Let me try to bring us back to where I think we should be going.

What the committee is trying to ascertain and what gave rise to the entire investigation from this committee's viewpoint, had to do with the availability of documentation that the committee believed was essential to carry out their oversight review of the issue in the first place. Isn't that the way you understand that?

Ms. **Lavelle**. Yes, sir.

Mr. **Roe**. It seems to me that the purpose is not to say who did what to whom but what we are pursuing, is what damage is being done to the health of the American people. That is the issue before us when all the lights are dimmed, that is what will come out of this discussion as I see it.

Now, having said that, you had the responsibility and you were the assistant administrator for this phase of the work. That is an extraordinarily important position as we all agree and it seems to me there is a dichotomy which exists here. What I would like to get at has to do with the report that was issued by Mr. Perry who was the chief counsel, as I understand it, for the organization. He was responding under date of January 16.

It was a statement that he issued in response to hazardous wastes enforcement's report, and the report was originally released by our distinguished colleague Mr. Dingell.

In that report under date of January 16, 1983, he expanded on all the encomiums of what a superb job was being done under your direction and with the officers who were in charge under you, the members of your staff and what a great job was being done.

He listed a whole list of things under that date which was only January 16, and what a great job was being done. And he took great umbrage with the report that was issued by Mr. Dingell and that companion committee. In fact we said we are sorry the committee in its unprincipled report chose to disregard EPA accomplishments since 1982; are you familiar with that?

Ms. LAVELLE. Yes, sir; I am very familiar with that report.

Mr. ROE. So that was on the 16th.

Ms. LAVELLE. Yes, sir.

Mr. ROE. Let me ask you this. In view of that situation, in view of the reports that we had from Mrs. Gorsuch/Burford going back only a couple weeks ago, what happened? I am not being facetious—let me ask you this specific question on point.

Ms. LAVELLE. Yes, sir.

Mr. ROE. In your judgment were you asked to resign to be the scapegoat for the Agency's shortcomings in its attitude before the Congress of the United States and refusal to issue the information that the Congress needs to carry out its work, in your judgment.

Do you feel you are being made the scapegoat?

Ms. LAVELLE. Well, Mr. Chairman, I have been reading press reviews of what has happened, who had communications with whom prior to that Friday, and there certainly were a great many more people that knew that I was going to be terminated. I had no indication. That January 16 reply that you cited was authored in part by me, reviewed entirely by the Administrator. So as far as I was concerned I was doing my job. I was performing consistent with the direction that was given to me.

So this whole thing is phenomenal to me. I don't understand.

Mr. ROE. I don't want to put you on the spot, I know it is a tough position you are in now, but do you feel you are being used perhaps as a smokescreen over the top of what the substance of the issue is? In candor from this member's point of view, what happened on Monday afternoon or Tuesday afternoon outside of the facts relating to you, the fact is we don't want this hearing to be a smokescreen over the concern of the Congress. The fundamental concern of the Congress is, one, has the Agency carried out its function effectively as the way Congress directed it to do; and two, if there is nothing to hide, why do we go through this whole drill and have to cite people for contempt of Congress because they refuse to give information to the committees that are the Oversight Committee to carry out the law? That is what I am trying to get at.

Therefore, do you feel that at this point you are being made the scapegoat and that perhaps if Congress takes it out on you that everything else will go away and business will be carried out as usual?

Ms. LAVELLE. Well, first off you are right, I am terminated, I am out, so I don't care to go through all of that discussion. I don't think it helps all of us. We want to get EPA back on the track to doing the job. I appreciate the chairman's direction.

To my knowledge we were doing everything we could to meet our mission consistent with good policy direction and that is what I hoped to express today.

I know of nothing needful of coverup. I knew of some documents that in the public interest it was best that they not be given to the public. But I knew from my training——

Mr. **Roe**. Can you tell us why? The issue is—let me, if you would yield for a moment I just want to rephrase that.

You are getting to the heart of the issue.

Why should it be—think a minute—should Members of Congress, 435 strong that are responsible for all of the legislation for the people of our country and the Free world, have to get into a hassle with the Administrators of EPA in order to secure what they believe to be vital information to implement the law that they passed to take care, and to protect, and ensure the health of the American people? That is the issue before us, I think, in large measure.

Ms. **Lavelle**. Mr. Roe, I agreed with that position. Let me just state for the record what I think occurred here. In fact, I was in Mr. Levitas' office September 29 to the best of my recollection checking my calendar, saying let's coordinate the investigation so that when you are coming in we have people there to meet you on the other end so we can expedite this whole examination.

We had nothing to cover up.

From my defense training I know that there are ways that Congress, Members of Congress can look at certain sensitive documents that for purposes of public good it is not best to give to the public even today. Case in point, some of our witnesses in some of our criminal cases—we have all lived through that—the discussions of the strengths and weaknesses of our case in terms of prosecuting a particular company. So there was a logic but I said that internally there was also a means.

The entire affair of how it was handled with Congress was taken out of my hands. That was totally orchestrated by Mr. Perry.

Mr. **Roe**. I was going to ask you at that point. Therefore, from your observation, it was taken out of your hands. In your judgment, from your knowledge, was the decision made to deny this information made by Mr. Perry or by whom was it made?

Ms. **Lavelle**. By Mr. Perry and by the Administrator in—and later I came to find Justice was in there.

Mr. **Roe**. Let me ask two questions because I know other members have a number of things they want to ask, but I think these are germane.

In your opening statement on page 4 you listed a number of items that carried over from page 3 and I quote for the record that "I was appointed Assistant Administrator on April 1, 1982. What was the situation when I arrived?"

Then you enumerated four or five situations and then you have No. 5, I quote from your testimony as "an open-ended university of potential sites, with no program to curtail new ones from occurring."

Explain that just a little bit?

Ms. **Lavelle**. What I meant there, Mr. Roe, was RCRA was not in place like it should be to prevent new sites from occurring. We need proper management for hazardous wastes, strong RCRA would indeed encourage that.

Mr. **Roe**. Let me build on that just for a moment and this will also fortify the concern of the authorizing committees.

In other words, if we didn't have any methodology devised at that point to curtail new ones, meaning toxic sites, from occurring, it meant that we had an open-ended situation unless that was plugged somehow.

Ms. **Lavelle**. Yes.

Mr. **Roe**. Also I know you are familiar with the overall Clean Water Act and of course part of the provisions of the Clean Water Act are based upon the point of pretreatment of toxic wastes, and pretreatment of heavy metals, and things of that nature.

From your knowledge and observation and your responsibility was there a coordination going on between the enforcement, identification, and cleaning up through Superfund or RCRA with the basic legislative approach in the first place? Did you see anything contravening there?

Ms. **Lavelle**. You mean with the Clean Water Act?

Mr. **Roe**. Yes, because it is an integral part of that, particularly concerning ground water.

Ms. **Lavelle**. No, the last few months Mr. Idsness, the Assistant Administrator for Water, he and I were seeking to work closer.

Mr. **Roe**. Did you have formal direction to close this gap by working closer together or is it something that emerged yourself?

Ms. **Lavelle**. It was something that emerged between us. We had no formal direction to do this.

Mr. **Roe**. Is there any formal direction today to coordinate this effort to your knowledge?

Ms. **Lavelle**. No, sir.

Mr. **Roe**. Let me ask another question and I will defer to the gentleman from Kentucky. In the statement issued in response, Mr. Perry issuing his statement under date of January 16, 1983, to Congressman Dingell's observation he made the following comment and I quote. On page 5 of that testimony he says: "Our commitment to this program is absolute and we are outraged by the subcommittee's suggestion to the contrary."

He is responding to Mr. Dingell's statement.

Then there is a new paragraph: "Although there is much in the report with which we disagree, we certainly share the subcommittee's concern about the alleged involvement of organized crime in segments of the toxic waste industry."

Let me repeat that: "Although there is much in the report with which we disagree, we certainly share the subcommittee's concern about the alleged involvement of organized crime in segments of the toxic waste industry."

That is coming from the statement directly made by Mr. Perry under that date.

Do you have any knowledge, is there anything that you would know of any connections of that nature that has been brought to your attention? Have there been any discussions in the Agency on that issue? Anything of that nature that the committee ought to know about, factually, what happened? Was it ever discussed? Was there any research that went on, any investigation into alleged crime being involved or criminal organizations being involved in this whole procedure?

Ms. **LAVELLE**. Mr. Roe, it was either 22 or 26 investigators have been hired to do just that, to investigate allegations that had been made to many of our regional offices. We did have—what do I want to say—some substantiation of there possibly being such a pattern through questions that we asked in our permitting procedure for giving of a RCRA form—we call it a part A—to operate.

As such I was certainly aware of the hiring of the investigators and if you examine the workload of the investigators it was devoted most of it to RCRA Superfund investigations.

Mr. **ROE**. Is there anything of substance that came to your attention as administrator that, yes, there was, or no there was not organized crime involved in these cases? You spoke of some cases being or having criminal response—I am looking at that a little different from the question I ask you now. Is there any knowledge you have of any organized crime, organizations being involved in any way called to your attention in this overall program?

Ms. **LAVELLE**. Well, the internal procedure is such that I did not have firsthand knowledge. The investigations were ongoing, no report of any investigations had been made to me as I left. Mr. Lucero who is in charge of enforcement for my office was the person to whom these reports were being given and anticipating they would be going to me, but I don't think at the time I left any of the investigations were completed.

Mr. **ROE**. Are those investigations being conducted?

Ms. **LAVELLE**. Yes, to my knowledge they are.

Mr. **ROE**. I yield to Mr. Snyder, the distinguished ranking member of the committee.

Mr. **SNYDER**. Thank you, Mr. Chairman.

Ms. Lavelle, I appreciate your being here.

In your prepared statement you refer to the alleged memo. I take it that the memo is not really alleged, it is a real memo. We have a copy of it.

You indicate it was found in your memory typewriter in your office or shop. You said that it was a talking paper prepared by a member of your staff, one of your assistants. Who is that assistant?

Ms. **LAVELLE**. Mr. Gene Ingold.

Mr. **SNYDER**. Would you spell the last name?

Ms. **LAVELLE**. I-n-g-o-l-d.

Mr. **SNYDER**. What is Mr. Ingold's title?

Ms. **LAVELLE**. He is no longer employed by the Agency. However, he was special assistant to me.

Mr. **SNYDER**. Who employed him?

Ms. **LAVELLE**. The Agency. I did, I guess that would be——

Mr. **SNYDER**. You made the decision to hire him?

Ms. **LAVELLE**. Yes, sir.

Mr. **SNYDER**. How long did he work there?

Ms. **LAVELLE**. About a year, a little less than a year.

Mr. **SNYDER**. Where did he come from?

Ms. Lavelle. I said yesterday it was the Department of Energy. He told me that it was Nuclear Regulatory Commission. He was a civil servant for a number of years.

Mr. Snyder. He was from NRC?

Ms. Lavelle. I may have the Agency wrong, but basically he was a RIF'd employee.

Mr. Snyder. Was there ever any indication from Mr. Ingold or anyone else as a matter of fact, that Mr. Ingold had problems with Mr. Perry prior to being employed with your Agency?

Ms. Lavelle. With Mr. Perry?

Mr. Snyder. Yes.

Ms. Lavelle. Not that I am aware. I cannot see how the two would have met.

Mr. Snyder. If he was with NRC and Perry was with, I believe, Exxon there could have been contact.

Ms. Lavelle. Yes, sir.

Mr. Snyder. I ask because there could have been some problem in the past we don't know about. You are not aware of any?

Ms. Lavelle. No, sir, I am not aware of any.

Mr. Snyder. But Mr. Ingold has acknowledged that he did prepare that talking paper?

Ms. Lavelle. Yes, sir.

Mr. Snyder. When did you come on board as Assistant Administrator?

Ms. Lavelle. April 1.

Mr. Snyder. What year?

Ms. Lavelle. 1982.

Mr. Snyder. Have most of the accomplishments that you laid out in your statement in regard to Superfund and RCRA been accomplished since you came on board?

Ms. Lavelle. Most of them, yes, sir. You can see it in the report even that Mr. Roe cited, the enforcement report.

Mr. Snyder. Superfund is only 2 years old.

Ms. Lavelle. Yes, sir.

Mr. Snyder. RCRA was enacted in October 1976.

Ms. Lavelle. Yes, sir.

Mr. Snyder. What was the status of the RCRA requirements as you found them in April 1982?

Ms. Lavelle. Most of the work had been put into implementation of the solid waste aspects, in other words, nonhazardous revenues, a program which had been turned over to the State.

I would say like the last year and a half before I came on was devoted, the technical side of the House, to trying to develop some of these regulations but the work was pretty much unfocused in terms of where the regulations would go so that the backup data would be there and all the regulatory language, et cetera, to deliver a package.

Mr. Snyder. From October 1976 until April 1982 there was an awful lot done in regard to RCRA?

Ms. Lavelle. No, sir. In terms of hazardous waste.

Mr. Snyder. If you compare the accomplishments of the Superfund in 2 years with the accomplishments of RCRA in 6½ years it looks like Superfund is progressing perhaps better than RCRA had progressed up to that point?

Ms. LAVELLE. Up to that point though I am quick to point out that RCRA now finally is a very strong program, one that was I think very much overdue.

Mr. SNYDER. The press has reported and you have mentioned in your statement allegations of sweetheart deals.

Ms. LAVELLE. Yes, sir.

Mr. SNYDER. I would ask you to tell me whether any settlement in regard to Superfund that might have been arrived at between EPA and industry, whatever industry, would have been passed on by more than one individual more than Rita Lavelle.

Ms. LAVELLE. Yes, sir.

Mr. SNYDER. Who passed on these settlements? I know you indicated the U.S. district court in regard to Seymour, but within the Agency, who else was involved in approving settlements?

Ms. LAVELLE. It involved of course the regional council and regional administrator. It would then—excuse me, except in the case where it was a nationally managed settlement like a Seymour and Chem-Dyne. Then it would involve people in my office in the enforcement aspects, Mr. Lucero's shop, as well as people in Mr. Perry's shop. Oftentimes justice as well.

Those are the main actors.

Mr. SNYDER. Are there any of the settlements that you can recall that were not approved by all of the people who were in the offices that they were supposed to have been approved by?

Ms. LAVELLE. The settlements that were achieved, no, not that I have any knowledge of, no.

Mr. SNYDER. So if in fact you were aware of sweetheart deals, which you say of course there haven't been any, it would have required the collusion of not only Rita Lavelle's shop but the enforcement shop, and the general counsel's shop and in many instances the regional administrator and regional counsel's shop.

Ms. LAVELLE. That is true, sir.

Mr. SNYDER. Have you personally ever criticized Mr. Perry or his shop for being too aggressive in wanting to litigate as opposed to negotiate and settle with companies responsible for toxic waste dumps?

Ms. LAVELLE. I have been critical of an approach that often pushes for litigation before there is any communication, in other words before there is any active seeking of, will you come to the table and negotiate?

I would point out ironically, I also was critical in cases where full litigation was not occurring. I return you to Seymour. As I left, there was a policy dispute over, as you are well aware, there were the first settlers for the surface, then 100-plus settlers for the ground water, and that left us with about 150 or so settlers who I felt should all be prosecuted for their fair share.

There was a source of dispute there as to whether that would indeed be the practice or not.

Mr. SNYDER. Apparently it was reported in the press that EPA officials accused you of continuing to take part in the Stringfellow acid pits case after you theoretically disqualified yourself from the case, having previously worked for Aerojet.

Would you tell us for the record what your involvement was, if any, what your disqualification efforts were, if any, in regard to that particular incident?

Ms. **Lavelle**. Well, first of all I committed to the Senate committee during my nomination hearings that I would recuse myself on any matters affecting my prior employer.

The situation here is that Aerojet was one of 250 disposers who were using a permitted ironically, a permitted facility in Los Angeles County to dispose of their wastes.

The facility because it was not constructed and operated correctly started leaking.

Under the Superfund law the disposers are responsible for cleanup. It was a multiparty case. My only knowledge was that the fact that there was a universe of about 200-plus potential disposers at this facility. I had no knowledge whatsoever that Aerojet General's, one of its subsidiaries, would be one of the 250 universe until the evening, Thursday evening—I was looking for the date—I think it is the 17th.

Here we go. The 17th, Thursday evening, is when for the first time I saw a list of disposers. It was in anticipation of sending out notice letters to all the disposers that they were indeed responsible for cleanup at Stringfellow. I left the meeting and my staff prepared a letter of recusal which I signed the next morning, that was June 18.

Then your question was, did I have meetings after that.

Mr. **Snyder**. Just tell us the facts about that case insofar as it involves you.

Ms. **Lavelle**. After that I had—I put Mr. Lucero in charge of the enforcement aspects, and Mr. Hedeman in charge of the program aspects. I in no way involved myself in any policy or decision-making after that date consistent with the recusal statement.

However, there were meetings where the word "Stringfellow" came up and I don't want to mislead this committee, I was present in the room when the word "Stringfellow" came up. There was a senior manager, and we had weekly staff meetings. I am sure the word "Stringfellow" came up. But it was never in a vein where I involved myself or inserted myself into the decision-making process. That is how I conducted myself.

Mr. **Snyder**. If I might return to previous line of questioning, where would we find Mr. Ingold these days?

Ms. **Lavelle**. He is in here in the room.

He is unemployed. So he is here listening.

Mr. **Snyder**. Was he terminated at the same time you were?

Ms. **Lavelle**. He was terminated Monday along with other members of my staff and the litany has been growing every day.

Mr. **Snyder**. I read that.

Ms. **Lavelle**. Yes, sir.

Mr. **Snyder**. You indicated in your prepared statement your inability to obtain documents from EPA. I notice you have been referring to some documents to recollect dates. Are those notes you have made?

Ms. **Lavelle**. This is very interesting, Senator, the——

Mr. **Snyder**. I haven't been elevated to the Senate yet and I don't even aspire to the position, thank you.

Ms. Lavelle. It was before because I got it for the first time in the Senate committee yesterday and what it is is letters from the Administrator to Mr. Schmultz outlining I guess a request for inquiry. In there it had a certification statement from me as to when I took the recusal. That is what I was looking at.

Mr. Snyder. In connection with that, have you requested documents from EPA or are you just assuming you cannot get them because of the press reports that your office or your former office is under guard or seige as the case may be?

Ms. Lavelle. Well, it is under guard. In fact I heard on the way in this morning there are 15 FBI agents over there today. But I don't know that for a fact.

No; I have not requested any documents. Frankly I am just appearing to try and clear up the record and try and get the Agency back on the road and end all of this rumor and insinuation so the employees can get to clean up.

I haven't asked for documents and I just haven't had time to. It has been enough of a shock getting through day-to-day activities and trying to read in the newspaper the latest allegation against me.

Mr. Snyder. I wasn't trying to needle you on the point but you asserted that you weren't able to get them and I assume that somewhere down the road somebody is going to say well, she didn't ask for them.

Ms. Lavelle. That is true.

Mr. Snyder. So I guess if you want access to your files maybe you ought to ask for them. I won't try to advise you since you have two competent counsel there. But down the road they may agree that you failed to ask for the files.

I want to thank you for being here and trying to help us unravel whatever the problems are at EPA if any, and to find out why EPA has not been any more cooperative than some of us think it should have been. I don't make that statement in regard to you personally. I am inclined to think that the Justice Department is probably as much a culprit as anybody.

Thank you very much.

Thank you, Mr. Chairman.

Ms. Lavelle. Thank you.

Mr. Levitas [presiding]. Thank you, Mr. Snyder.

The gentleman from Texas, Mr. Andrews.

Mr. Andrews. Ms. Lavelle, is it my understanding that neither you nor your attorneys, neither yourself nor your attorneys requested that EPA allow you access to your records and documents at the Agency?

Ms. Lavelle. Well, they are not mine. They are Agency documents, but, no, we have not requested it.

Mr. Andrews. You testified here a little earlier that you only left with your purse, are you now telling us that those records there were available for you this morning had you merely asked to look at them in preparation for your testimony.?

Ms. Lavelle. I don't know if they would be available or not, Mr. Andrews, I have just not had time, it has been hard enough to get through this period in my life without having to go over and seek documents.

I think what I should be doing right now is typing a résumé and looking for a job.

Mr. **Andrews**. Have your attorneys attempted to take a look at any of those records at the EPA and have they been so turned down and denied access?

Mr. **James Bierbower**. We have not attempted, sir.

Ms. **Lavelle**. We have been too busy.

Mr. **Andrews**. I would like to ask you a little about your employment with Aerojet. Would you tell us briefly what the nature of your duties were?

Ms. **Lavelle**. I was in charge of—I was director of communications, first for Cordova Chemical and then for Aerojet Liquid Rocket Co. As such I reported to the president of the company and was responsible, for the sake of brevity, for external affairs.

Mr. **Andrews**. Does that mean that you did public relations work for the company?

Ms. **Lavelle**. Among other things, yes, sir.

Mr. **Andrews**. As it related to toxic wastesites and the public perception of Aerojet?

Ms. **Lavelle**. Yes, sir, among other things.

Mr. **Andrews**. Did in fact you promote a public-relations-type campaign to enhance the projection and public appearance of Aerojet?

Ms. **Lavelle**. I developed a campaign to tell the facts as they were, not to cover up or anything because the company was cleaning up and as far as I know is continuing to clean up a problem that occurred because of lack of know how in the past. It was not using any Government money but using their own money to do so.

Mr. **Andrews**. In 1979, California accused your company of dumping some 20,000 gallons per day of poisonous waste. Is that correct?

Ms. **Lavelle**. I don't know of the gallons but that was I imagine part of the charge.

Mr. **Andrews**. In 1981, the EPA designated the Rancho Cordova plant as one of the Nation's worst dumpsites, is that correct?

Ms. **Lavelle**. Yes, sir.

Mr. **Andrews**. Aerojet was one of the 100 companies that were the primary targets in the Stringfellow acid pits during your tenure at Aerojet, is that correct?

Ms. **Lavelle**. Well, first of all that Stringfellow case, to put it in perspective, the case was 20 years old. Now I wasn't there. I was only there in 1979, 1980, 1981. More importantly, I think it was consistent with what a lot of companies were doing in southern California. This was a permitted facility, in retrospect improperly constructed and improperly run.

Mr. **Andrews**. The problem was there when you were employed with Aerojet and you dealt with the problem.

Ms. **Lavelle**. I never dealt with Stringfellow. We had no knowledge that we were at Stringfellow, that we had any problem. We being the corporate we. I point out that it was an Aerojet General subsidiary that Aerojet General had even sold in the 20-year period.

Mr. **Andrews**. When did you become aware of the Aerojet problem at Stringfellow?

Ms. **Lavelle.** I became aware of the alleged Aerojet connection the Thursday evening, June 17, when I recused myself. It was in anticipation of sending out notice letters to responsible parties.

Mr. **Andrews.** And it was not until that time that you knew of any involvement of your company?

Ms. **Lavelle.** That is correct.

Mr. **Andrews.** At that wastesite?

Ms. **Lavelle.** That is correct.

Mr. **Andrews.** After June 18, did you directly or indirectly ever involve yourself in any negotiations or sit in on any meetings whatsoever that concerned the Stringfellow site and your former company?

Ms. **Lavelle.** I sat in meetings whereas—in other words I did not sit in on a meeting that was Stringfellow or on Stringfellow. I had recused myself. I had nothing to do with it. My staff was very good about ensuring that did not occur. But I don't want to lead you, Mr. Andrews, to the conclusion that I never was involved in, for instance, weekly staff meetings or other meetings wherein the word "Stringfellow" would come up or a status report.

But I always would say: "I am recused on that, let's go on with business." I never was involved in policy or decisionmaking.

Mr. **Andrews.** Every time Aerojet came up in any of the staff meetings you told the staff employees at that time that you recused yourself, to please go on to another matter?

Ms. **Lavelle.** As far as I can recollect. Additionally, the staff knew I was one of the easy people that came in with the administration in that I only had one company I had to recuse myself on so they knew. So very rarely did they bring it up, the sites. They were very good about that.

Mr. **Andrews.** There have been two reports that I have seen in the news media that you were asked on two occasions to exuse yourself from the meetings because of those discussions. Is that correct?

Ms. **Lavelle.** I don't recollect anything like that.

Mr. **Andrews.** Were you ever asked by any of the employees or general counsel to excuse yourself from the room?

Ms. **Lavelle.** I don't recall anything like that.

Mr. **Andrews.** Would you tell us what a litigation team is and how that worked in your Agency?

Ms. **Lavelle.** A litigation team?

Mr. **Andrews.** How were cases prosecuted in the EPA?

Ms. **Lavelle.** Well, it depended on how one was proceeding with the particular case. Basically, our ultimate objective was to get 418 sites cleaned up using all of the tools at our—under the law that we had. We would go through a decision analysis as to which particular tool to employ in order to get that cleanup in the best manner.

In most cases it was a negotiation team, a technical team at the region with attorneys called in when negotiations were going on. If that would go to a litigation, in other words if we had a filed case, it would then revert to direction by the attorneys in Justice.

Mr. **Andrews.** Within your Agency who made the ultimate decision of whether a case was to be settled or a case was to be tried or whether criminal indictments were to be proceeded with, who made that decision?

Ms. Lavelle. That was one of the matters that we needed to discuss with the Administrator. As I left it was functioning—basically it was my decision, and I would then refer it to Mr. Perry. If it was a filed case it was his from then on. He was the only link to Justice, we would never go to Justice without Mr. Perry.

Mr. Andrews. So your testimony is whether a case was prosecuted or settled, or whether criminal prosecution was proceeded with, it was your decision to make?

Ms. Lavelle. Basically, yes. We took an analysis of the cases, of all the sites and weighed our options and this mostly was I guess done in the region with review in Washington and then it would be referred to Mr. Perry's shop.

We had what we called a strategic plan in place whereby we could deliver a number of site cleanups. We were reviewing this with Mr. Perry's shop and that is how he anticipated how many cases he would be prosecuting, how many negotiations we would be assisting in and so on.

Mr. Andrews. Who made the ultimate decision, you or Mr. Perry?

Ms. Lavelle. On whether it has to be negotiated or filed?

Mr. Andrews. Yes.

Ms. Lavelle. It was not clearcut.

Mr. Andrews. What if there is a dispute between you and Mr. Perry as to whether the case should be settled, or——

Ms. Lavelle. That was the problem.

Mr. Andrews. How did those problems resolve themselves?

Ms. Lavelle. They were unresolved as I left.

Mr. Andrews. What was the chain of command within the Agency?

Ms. Lavelle. It was not clearly established.

Mr. Andrews. Did you voice those concerns to Mr. Perry?

Ms. Lavelle. Yes, sir; I did.

Mr. Andrews. Did you voice those concerns to the administration?

Ms. Lavelle. I voiced them to Mr. Daniels.

Mr. Andrews. What was the result?

Ms. Lavelle. There was no meeting. We did not get to resolve this.

Mr. Andrews. Who did you look to for policy counsel? Interpretation of the statutes, for example, suggestions on the ability to successfully prosecute a case, who did you look to for counsel?

Ms. Lavelle. Mr. Perry's shop.

Mr. Andrews. Did Mr. Perry ever have a veto over your decisions? Let me rephrase it—did he ever act by inaction and veto your decision to settle or prosecute a case?

Ms. Lavelle. I guess you could say that that was occurring, and that led to a lot of our discussions between Mr. Perry and myself.

Mr. Andrews. Did you think Mr. Perry's advice was adequate?

Ms. Lavelle. Advice was adequate?

Mr. Andrews. Did you think his legal advice and advice was adequate where you could make a decision?

Ms. Lavelle. I had questions about it.

Mr. Andrews. What kind of questions did you have?

Ms. Lavelle. Where all options were being presented to me.

Mr. Andrews. Did you voice those concerns to Mr. Perry?

Ms. Lavelle. Yes; I did.

Mr. Andrews. Did you go around Mr. Perry and talk to anyone else in EPA about them?

Ms. Lavelle. The only way that you would resolve such a dispute is to go to the Administrator.

Mr. Andrews. Did you do that?

Ms. Lavelle. I was trying to go to the Administrator. This situation really had just come to a head like in the last 4 to 5 weeks, maybe 8 weeks before I was asked to leave.

Mr. Andrews. Ms. Lavelle, you testified before the Senate yesterday and I think have answered immediate questions that you have on numerous occasions gone to lunches with corporations and agents of corporations that were in the process of being investigated or prosecuted by the EPA.

Did you talk during those lunches about the nature of the investigation and have settlement conversations during those lunches?

Ms. Lavelle. No, sir; I did not and I would point out that many of those alleged luncheons were not with—they were with businesses, obviously if I am regulating 65,000 businesses yes, some of them are regulated but they were not all companies that had a filed case or a scenario that you outlined.

But of course I did not discuss cases like that that were filed. That would be inappropriate.

Mr. Andrews. Did you pay for your own lunch?

Ms. Lavelle. Sometimes I did, sometimes I paid for their lunch but I don't have a cost-accounting method to remember who did what.

Mr. Andrews. Sometimes they paid for your lunch?

Ms. Lavelle. Yes, sir; they did.

Mr. Andrews. Did you ever indirectly or directly accept any gifts from any corporations or any outside agencies of any nature?

Ms. Lavelle. I think I got one photograph of an incinerator, hazardous waste incinerator. I got a garbage can belt buckle from the GRDCA when I spoke there.

I think I got a pen from Chemical Securities Co.

That is all I can remember.

Mr. Andrews. Did you ever travel by air at the expense of any of those companies?

Ms. Lavelle. Never.

Mr. Andrews. Have you ever read the guidance on ethics and conflict of interest that is for your Agency published by EPA?

Ms. Lavelle. No, sir.

Mr. Andrews. Are you familiar with the regulation in that Agency that says employees are not authorized to accept business lunches. They must pick up their own checks.

Ms. Lavelle. Yes, sir.

Mr. Andrews. When did you become aware of that rule?

Ms. Lavelle. Mr. Andrews, I am embarrassed to say that I really was not aware of it. I obviously am quite aware of it now. I was never told by any ethics officer or anything. I know there was a reporting requirement on financial disclosure but I did not anticipate that that was part of it.

I am not trying to avoid it. I had heard it but I was never formally communicated with.

Mr. Andrews. Have you read this document?

Ms. Lavelle. No, sir.

Mr. Andrews. Has anyone ever presented it to you at the Agency?

Ms. Lavelle. No, sir.

Mr. Andrews. Did you ever inquire when you got your appointment that—whether or not there was such a document on ethics, and conduct, and propriety that the Agency heads should have and carry on?

Ms. Lavelle. When I was sworn in and also when you apply as a consultant you meet with the Agency ethics officer who told me, you know, the financial disclosure forms you have to complete.

I never thought to ask for any such thing. I just assumed that completion of such documents were enough.

Mr. Andrews. Did you ever consult with the ethics officer of the EPA about the propriety of lunching with the very corporations that your Agency was prosecuting?

Ms. Lavelle. Well you know I have to go back and reconstruct this. A lot of times it was speeches to groups. I saw it as a speech situation or a talking situation and it wasn't an acceptance of gratuities or anything. It never entered my thinking that it might be inappropriate.

Mr. Levitas. The time of the gentleman has expired. We will of course return to that.

The gentleman from Florida, Mr. Shaw.

Mr. Shaw. Thank you, Mr. Chairman.

I would like to pursue the line of questioning of the gentleman from Texas with regard to the lunches.

During these luncheons, were there ever negotiations with individuals whose cases had already been turned over to General Counsel, Mr. Perry's office, for prosecution?

Ms. Lavelle. First of all, I was not negotiating across a lunch table. This is hard to——

Mr. Shaw. Let's take it out of the restaurant and put it in the whole world.

Ms. Lavelle. Or even in the office.

Mr. Shaw. Did you involve yourself in negotiations with corporations or individuals who had been turned over to Mr. Perry's office, the general counsel's office, for prosecution?

Ms. Lavelle. For prosecution—well, I am thinking of the negotiations on the Seymour situation as well as Chem-Dyne, where I met with counsel in the room with these people in the negotiating process.

Mr. Shaw. Let me refine my question and limit it even more.

Ms. Lavelle. OK.

Mr. Shaw. Did you unilaterally or totally, with your own staff, without employees of the general counsel's office being present, attempt to negotiate settlements after the cases were referred to Mr. Perry's office for prosecution?

Ms. Lavelle. No, sir; not to my knowledge at all.

Mr. Shaw, if I might, I think what you are going around is this allegation that I spoke with Outboard Marine, is that it?

Mr. Shaw. Ms. Lavelle, there are enough allegations that I am sure we can pick one for any question that has been asked today.

Ms. Lavelle. Let me just state it this way: I would always, when I was giving speeches or meeting with company officials, always indicate that the Agency policy was to negotiate across the table trying to get these sites cleaned up and litigate right after that.

So I may have communicated that policy but I never went any further. I would not do that. That is not what my job was.

Mr. Shaw. You are saying the policy was to try to negotiate a settlement which seems to be reasonable enough but when one cannot be reached, then it was to be turned over to Mr. Perry's office for prosecution. At that point did you divorce yourself and your people from this particular case and in that time look at it as a case which Mr. Perry and his staff were in charge of?

Ms. Lavelle. Well——

Mr. Shaw. What is coming out of this testimony, it seems, is that there are turf battles going on at EPA. The clear, defined responsibilities of various people and when their function ends and another part of the Agency's function begins is hazy in some areas. Perhaps this is understandable in that we are only getting started in this particular area.

However, as many of us up here have certainly recognized, the losers in such situations are certainly the public because the job is not getting done. We deal with personalities and turf and egoes instead of dealing with the problem; that is getting rid of the hazardous waste.

Ms. Lavelle. I couldn't agree any more, that our objective was to get these sites cleaned up. When we turned a case over to Mr. Perry's shop, in other words it was going to be a filed case, we were out of it.

There were, though, Mr. Shaw, a couple of cases that had been filed previously where no attempt to negotiate had occurred, and, Mr. Perry and I were having discussions about some of these cases. That is the only scenario I can think of where such discussions did occur.

As you pointed out, it was, I think it is to be expected in a program that was just starting up, but the procedures were in place, that once the case was turned over to Mr. Perry for prosecution, he was in charge and he would call on our technical resources as necessary to come up with various settlements.

Mr. Shaw. How many people worked directly under you at EPA?

Ms. Lavelle. In Washington, about 360.

Mr. Shaw. How about across the country?

Ms. Lavelle. In the hazardous waste program there are about 1,100.

Mr. Shaw. I just have one more area to explore. Going back in your final days at EPA, did you sense there was an investigation going on of your files, of your memoranda? I am speaking specifically about the time that this memorandum showed up in a memory typewriter. Did you feel or sense that there was an investigation of you or your papers going on at that particular time?

Ms. LAVELLE. I had no such indication whatsoever. I had no sense of that.

Mr. SHAW. Had there been such an investigation, do you think you would have been aware of it?

Ms. LAVELLE. Well, I am the type of manager, if you have a problem with the manager you confront him with it and you know, let's work it out and if there is a problem, what is going on? I don't believe in sneaking around at night snooping on your managers.

Mr. SHAW. Obviously, you wouldn't have been doing it. I wondered if you sensed any third person doing it?

Ms. LAVELLE. Well, I guess——

Mr. SHAW. Anybody in your employ or in the other shops as you refer to them?

Ms. LAVELLE. I guess it was going on in my office—of my office. I had no indication. I would point out—this is probably the most, what do I want to say—dramatic result of all this investigation and leaking, et cetera—in our RCRA and Superfund offices there were documents and documents is perhaps too strong a word, talking points really, basically staff recommendations thought out in the spirit of intellectual freedom of different approaches that we could use with the pluses and minuses and what they would be; that were disappearing and coming to media attention or to the Hill and we were then in a response mode, trying to explain these inconclusive freely thought out recommendations to their superiors as a policy. The two were not equated.

What was the situation before I left? My senior managers no longer could manage in the way that we were managing. What was that? Often we would have decisionmaking meetings during the day, during the night we would read notes from staff. This is good, this is bad; so on. We had, for instance, 15 to 22 engineering solutions at a site. What were the strengths, minuses, et cetera.

It just was becoming a horrible way to manage and I think it is a tragedy that what is happening now is people who are taking these documents and leaking them are not considered the bad actors.

But those who sought out opinions in order to try to make some decisions, their decision is being equated to those opinions that came to them in anticipation of them setting policy or making decisions.

I tell you it is a heck of a way to try and run a program. That is the last few months before I left.

Mr. LEVITAS. The time of the gentleman has expired.

For purposes of advising the members of the committee, I am as I indicated following a flexible 5-minute rule, but if the gentlemen and ladies who are doing the questioning would just sort of keep their eye on those two lights up there, when that red one goes on if you would try to bring your questioning to a conclusion as quickly as possible and we will get back to you.

The Chair recognizes the gentleman from Georgia, Mr. Rowland.

Mr. ROWLAND. Thank you, Mr. Chairman.

Ms. Lavelle, thank you for being here to try to clear up some problems that the subcommittee has encountered.

In your testimony on page 9 you state that some have accused me of making sweetheart deals with the industry. Would you define for me what you mean by sweetheart deals as you used in this context?

Ms. **Lavelle**. It has kind of been defined by those who are attacking. It depends on what the allegation is.

The first time I heard the word used was in regard to the *Seymour* settlement that perhaps responsible parties were able to cash out for less than what they would have been responsible for.

Mr. **Rowland**. That is a sweetheart deal as you have used it in this context here?

Ms. **Lavelle**. Yes.

Mr. **Rowland**. I believe you said earlier that settlements to be approved, there were several different entities involved, the administrators in the regional areas, your office; Mr. Perry's office, all of you were involved. Do you know of anyone on EPA who may have participated at any time in any sweetheart deals with industry as you have used the term here?

Ms. **Lavelle**. No, sir. I think the problem was self-correcting. In other words, my having so many checks and balances in the negotiation process as well as employing civil servants in the negotiation process, to the best of my knowledge the opportunity would not occur. That is how we were trying to manage it.

Mr. **Rowland**. I have no further questions, Mr. Chairman. Thank you.

Mr. **Levitas**. Thank you, Mr. Rowland.

The gentlewoman from Connecticut.

Mrs. **Johnson**. Thank you, Mr. Chairman.

Ms. Lavelle, I do appreciate your being here and your effort to be forthright.

In this whole issue of discussing and negotiating with industries about serious and costly problems of this type, was it the policy of EPA to offer to get involved in fine reductions, for example, in return for quick cleanup, quick action?

Ms. **Lavelle**. Congresswoman, let me site *Seymour* for you as an example. What we did there is went after environmental cleanup, in other words, in the particular instance this was surface removal activity, removal of all the drums.

That is what we were driving toward. However, the group wanted to do it, in other words, whatever company they would employ, what it would cost them, was basically their problem as long as the cleanup was consistent with the environmental protection that we called for; schedules, engineering expenses, et cetera.

These settlements were just not one or two page settlements, they were in-depth scientifically determined settlements, very—there were deadlines, there were penalties if you missed deadlines, there were requirements to use RCRA permitted facilities; to use a RCRA permitted transportation system, et cetera.

So the settlements were driven by the environmental cleanup we wanted to get.

Mrs. **Johnson**. Does this *Seymour* experience exemplify a difference of approach between you and Mr. Perry?

Ms. **Lavelle**. Well, the irony is that when we went to the State and announced with the Governor the *Seymour* settlement, Mr. Perry was with me.

Mrs. **Johnson**. Was there thereafter a difference?

Ms. **Lavelle**. The only difference that I can think of other than a give and take as we were going through the negotiations procedure was whether or not there would be a suit filed against all responsible parties.

Mrs. **Johnson**. Mr. Perry advocated such a suit?

Ms. **Lavelle**. I advocated such a suit, such a procedure. I am not a lawyer but there must be a way through class action, et cetera, to have everyone come in. He was approaching it, which is a valid approach but I didn't agree with it, that perhaps we should prioritize and just go after certain ones or even there was a lottery suggested at one point.

Mrs. **Johnson**. To your knowledge was there ever an attempt from outside your Agency from political people, either in the White House or outside of the White House, to influence who you dealt with, or how you dealt with them?

Ms. **Lavelle**. I——

Mrs. **Johnson**. Polluters, that is?

Ms. **Lavelle**. I never was aware of any such influence. Never.

Mrs. **Johnson**. Thank you.

Mr. **Roe**. Will the gentlelady yield?

Mrs. **Johnson**. Yes.

Mr. **Roe**. Didn't we have testimony from Mr. Perry? We had testimony from Mr. Perry, and did he not indicate to the committee that on many of these matters there were people in the White House that reviewed those issues? I seem to recall that in his testimony.

Ms. **Lavelle**. I can't speak to his testimony, but they never reviewed the settlements or involved in it. There were a couple of remarks offhand after they had read of it in the press, looks like you are getting a lot of cleanup, you are doing a good job.

That sort of remark. But there was never any formal review process that I was conscious of.

Mrs. **Johnson**. Thank you. I was not here during Mr. Perry's remarks so I cannot pursue that.

Thank you very much.

Mr. **Levitas**. Thank you, Mrs. Johnson.

The Chair recognizes the gentleman from West Virginia, Mr. Wise.

Mr. **Wise**. Thank you, Mr. Chairman.

Hello, Ms. Lavelle. On page 10 of your statement you said that your environmental constituency was a unique combination and that you had visited many of the sites in question.

Ms. **Lavelle**. Yes.

Mr. **Wise**. When and how many did you visit?

Ms. **Lavelle**. Well, Mr. Wise, I don't have my 1983 calendars; they are still with the Agency. But what I did do, especially when 1982 calendars hit the press, is went back and reviewed what I could reconstruct. Of that, I saw that I had 45 meetings, in depth, with members of the House and Senate regarding sites in their districts.

I had 33 meetings with citizen groups at the site or there were a few meetings with more normalized NRDC and EDF in discussions on pending litigation.

Also I met with 23 State directors, Governors or attorneys general, and attended four meetings where I stayed 2 days in order to allow every State director to come in and talk with me, which they did.

I also gave 28 speeches and in that time met with 41 representatives of industries—41 times.

Mr. WISE. Now the 41 times, is this on the road?

Ms. LAVELLE. Most of it was in—I have to look again—most of it was in the office from what I can remember. I would have to go back and review that.

Mr. WISE. But I am concerned with trips out of Washington now to sites.

Ms. LAVELLE. Oh.

I went to the sites. I did not stay in Washington. I learned a great deal when I went out to the sites. I sought the input from the citizens. Yesterday I was able to remind Mr. Chaffee, we learned in Rhode Island that the contracts had not been awarded, the money was not out there, the engineering had not started and unfortunately the way I became aware of it this is when I was out there meeting with the citzens themselves.

Mr. WISE. How did you meet with the citizens; did you hold town meetings?

Ms. LAVELLE. Town meetings or I can think of two instances where they had a lunch or a brunch that I was at and I didn't pay there either, but that—I was invited to that to stay and talk with them and hear their concerns.

Mr. WISE. When you went to these sites did you ever go accompanied by the companies that might have been involved in those sites?

Ms. LAVELLE. No; the only time there was a company person with me was when we were announcing *Seymour,* the team leader from the company side was there to represent their side of the negotiations as basically been heralded as having come to the table, pushing this approach.

Mr. WISE. During these trips out of Washington to the sites, then did you—is it your testimony you never met with company representatives?

Ms. LAVELLE. I met with company representatives when I was on the road. But you said at the site. Did I ever travel with company representatives? Not that I can remember.

Mr. WISE. Let's back up and go simply on the road. Did you meet with company representatives?

Ms. LAVELLE. Many times when I was on the road, yes, it was a plant tour, or—which was very helpful to me; or for instance in Louisiana I was able to tour down and see their incinerator, which is the largest in the world; and, second, I was able to look at new air monitoring techniques that we were able to employ to come up with some regulations for incineration.

Mr. WISE. Did you ever have dinner with these company representatives while you were on the road?

Ms. LAVELLE. A few times, yes.

Mr. WISE. Would they have paid for your dinner?

Ms. LAVELLE. Sometimes they did, sometimes I paid; sometimes I even paid for them.

Mr. Wise. Did you ever visit the—scratch that.

Would these meetings, with company representatives, have been on your calendar? I have not seen some parts of the calendars.

Ms. Lavelle. I imagine so. I didn't keep my calendars. My secretaries did. I think if you are after my trips, to the best of my recollection my staff kept my itineraries in the files there. They were left when I left. But I couldn't tell you where they were, I am not trying to avoid; I just don't know where they were.

Mr. Wise. When you went to these sites were you accompanied by regional officials?

Ms. Lavelle. When I went to the sites?

Mr. Wise. Yes, madam.

Ms. Lavelle. I would say yes. Mostly my region division, hazardous waste division director was with me or someone from his or her office.

Mr. Wise. Was there ever a situation in which regional officials recommended prosecution and you overrode that?

Ms. Lavelle. Where they recommended prosecution?

Mr. Roe. Would the gentleman yield?

Mr. Wise. Yes, sir.

Mr. Roe. We have looked up the testimony from Mr. Perry and I quote from the testimony:

> Mr. Mineta. On that ice flow I described a while ago we really don't know from one minute to the next from one piece of paper to the next, whether it is enforcement-sensitive, except you say at some point that yes, it is enforcement-sensitive.

Mr. Perry responds:

> Regional counsel, as Mr. Lucero pointed out, makes an original screening determination. That is sent up to our headquarters we review that on a three-tiered basis; my office, the Department of Justice, and the White House. This is a general criteria we apply on determining enforcement sensitivity.

Ms. Lavelle. Yes, sir. That is the policy that was established by Mr. Perry for review of documents to establish whether they are enforcement-sensitive or not.

Mr. Roe. Does that same three tiered procedure follow—had that been the procedure established as far as cases are involved?

Ms. Lavelle. No, sir, not to my knowledge.

Mr. Roe. You are saying that only relates specifically to the determination of a sensitive document?

Ms. Lavelle. Right. I think consistent with whether Executive privilege was going to be invoked or not.

Mr. Roe. Did the White House in your judgment have any role to play in any way in determining what cases would or would not be processed, whether they should be litigated in one way or the other? Was there anything to your knowledge where anyone in the White House, whatever, had any claim on that?

Ms. Lavelle. Absolutely none.

Mr. Wise. Mr. Chairman, just to get the final answer to my question, the question was whether there were any circumstances in which regional officials had recommended prosecution and you overrode that?

Ms. Lavelle. There may have been. I am not trying to avoid your question. None come to mind right now, though.

Mr. Wise. Thank you.

Mr. EDGAR. Would the gentleman yield on that same question?

Mr. WISE. Yes.

Mr. EDGAR. Were there any cases on which you sought prosecution and were overruled from up top?

Ms. LAVELLE. I assume you are talking about the Administrator.

Mr. EDGAR. That is correct.

Ms. LAVELLE. To my knowledge I was never overruled when seeking prosecution. However, cases were being slowed down and that was a source of frustration between our two offices. That is why I was having my discussions with Mr. Perry. But no, there was never any conscious effort to overrule the decision or recommendation that I made that way.

Mr. EDGAR. Thank you.

Mr. LEVITAS. The time of the gentleman has expired.

The gentleman from Tennessee.

Mr. SUNDQUIST. No questions.

Mr. LEVITAS. We are pleased to have members of the full committee with us today, and at this time the Chair will recognize the gentleman from California, Mr. Mineta.

Mr. MINETA. Thank you, Mr. Chairman.

Ms. Lavelle, we appreciate very much your being here at the committee. I would like to ask some questions of your own testimony. On page 2 you say first, I want to lay to rest the suspicions that there was anything sinister or underhanded concerning the termination of my appointment. I have done nothing wrong. I have nothing to hide.

Ms. LAVELLE. Yes, sir.

Mr. MINETA. What about the Agency, do they have anything to hide?

Ms. LAVELLE. Well, I would like to see an explanation. I have read in the press that there was discussion with White House officials and with Members of the Hill, mostly on the House side, regarding my termination weeks before the termination occurred. I have grave concerns and obviously I would like a better explanation.

Mr. MINETA. Are you familiar with the study done by the Office of the Inspector General of EPA disclosing that millions of dollars in the Superfund Program cannot be accounted for?

Ms. LAVELLE. The Senate committee yesterday cited it. I have not had a chance to review it but Mr. Mineta, when I first came on board Mr. Novick and I met and one of the problems, frankly, in startup was the accounting procedures for hours charged to Superfund. There was no direct accountability system.

I worked very closely with Mr. Novick. He is a professional; he has been in civil service in such a position for over 20 years, and we have a lot of investigations going on in terms of misaccounting. Also, I would like to say that Dr. Horton was helpful in that, developing that accounting system.

I can say today as I left, that there finally was an accounting system in place and that type of scenario that I have not had a chance to review the report, should not occur.

Mr. MINETA. So in your observation of what you saw in the accounting system, would you say that other EPA offices were improperly billing the Superfund for costs that they could not otherwise bill or fund through their own budgets?

Ms. LAVELLE. Mr. Mineta, that probably went the other way too, in that the Superfund was probably getting a lot of free work that was not being charged.

Superfund is a special fund.

Mr. MINETA. That is a lot of money; $1 billion just sitting there for someone to use, to put their hands into.

Ms. LAVELLE. That is correct. It is a special fund that we have to account—at least this is the way I was trying to direct it—account for every dollar, where it went; was it indeed spent on Superfund-related work. This is very important when we go for our cost recovery activity. We did not have an accounting system in place. Everything at the Agency was, for want of a better word, "general funded." Basically once you were given your positions, it was not easily tracked. This was the frustration I had in the RCRA program. We had *x* amount of money assigned to RCRA, but I could not put my hands on the attorney resources, for instance, or the resources in Dr. Horton's shop or the inspector general's resources.

It was a management problem.

Mr. MINETA. As I understand it, within your shop it was starting to, or in trying to deal with this whole issue of Superfund, you sort of developed steps. Step 1 would be to find the sites, the sites that might be in violation of the law.

Step 2 would be to try to design a solution.

Step 3 would be then the implementation of the solution.

Is that generally sort of a step process that was being utilized within the Superfund activity to find the place, find the solution and then the implementation?

Ms. LAVELLE. Yes, sir. But superimposed on that, working at the same time with it was an enforcement strategy as well as a number of what I will call macroprospective strategies where I had X resources to do Y amount of work and we were constantly balancing the resources and experiences we had at hand.

So that came into play as well.

Mr. MINETA. The biggest part of the Superfund would be then the moneys that are being spent in actual cleanup of the sites themselves, is that correct?

I understand this is where 80 or 90 percent of the money is actually being spent.

Ms. LAVELLE. That is true. We were able to cut our overhead quite a bit, but I would like to point out too, for the record, that the large expenditures were anticipated probably 20 months from now, some 18 months, and let me explain why, if I might, the expensive part of these site cleanups, it is kind of a geometric progression.

If your study is going to be 200,000, your surface cleanup might be 2 million—these are rough figures—your ground water aquifer problem is the big ticket item. That is the expensive part. That is the part we needed engineering for.

That might be as much as 20 million using this ratio analysis.

Mr. MINETA. Is there a need to investigate that aspect of the program. When you were asking the inspector general to take a look at it, is that an aspect of the program that needed to be looked at?

Ms. **Lavelle**. The accounting methods, yes, sir. Also, we were investigating cost overruns. When I first came to the job there were 120-day billing cycles in the field and there were verbal authorities in the field for onsite coordinators to give cost overruns with no accounting to the region or the headquarters.

We have that down now with a 30-day billing cycle and also a procedure in line for verbal authorization for overruns.

Mr. **Mineta**. Had you and Mr. Novick talked about that?

Ms. **Lavelle**. In great depth. In fact he had in his office—and I have the numbers wrong—but between 22 and 26 inspectors who were paid out of the Superfund authorities and their job was both—I call it proactive and reactive. They would go in and after the fact, and Mr. Novick was doing a good job in terms of getting them in there to help us so these problems didn't occur, that we had good cost controls in the field; that we had the appropriate accounting systems.

Mr. **Mineta**. My 5 minutes is just about to run out. Let me ask very quickly one last question. Do you know if any effort was being made or contemplated by the inspector general before he was fired yesterday to look into the issue of waste, fraud, and abuse in the Superfund Program?

Ms. **Lavelle**. Well, I had asked him to, so I am sure—he had already undertaken such a study. The report that was let last week was a draft report that we were working on together to come up with the explanations as to what had occurred so, yes, I know there were ongoing reports.

Mr. **Mineta**. Had you seen the draft?

Ms. **Lavelle**. No, sir, I had not, but Mr. Novick had told me, oh, I am going to say 5 or 6 weeks ago that there were accounting discrepancies and that we had to work together as we were doing with Dr. Horton, and that our new accounting system should meet these problems.

Mr. **Mineta**. Had he indicated that he thought he saw any waste, fraud, or abuse in these, at least what he had seen up to that point? Maybe not in those words, but——

Ms. **Lavelle**. Not in those words.

Mr. **Mineta**. Did he characterize his report in any way?

Ms. **Lavelle**. Mostly that we had work to do in terms of accounting for the dollars.

But "fraud" is a severe word. He didn't use that word with me at all. We also had cost overruns that he had become aware of in the field and that is consistent with the quick startup of a program and that is why I appreciated the opportunity to work with him, because that was the service; they could give us that service that we didn't have in the program office and we needed.

Mr. **Mineta**. Thank you very much, Ms. Lavelle.

Ms. **Lavelle**. Thank you.

Mr. **Levitas**. Before the Chair recognizes the gentleman from Michigan, I want to follow up with the response you gave to Mr. Mineta's question.

You talk about the difficulty of getting resources from RCRA, from Mr. Perry, from the inspector general and so forth, and that you had X resources and Y needs.

Are you saying in effect that there were inadequate resources to fully carry out the program that you wanted to carry out?

Ms. **Lavelle**. No, sir, I think there were adequate resources. We have a strong management plan in place. So, basically we could tell from that what support resources we needed. With ERP going to the various support offices asking that those resources be devoted to our work, RCRA enforcement, for instance—RCRA final state authorization is another. There was a pretty heated discussion between Mr. Perry and myself very recently as to whether those resources were there and were available, but I think on the whole the resources were there to do the job.

Mr. **Levitas**. We will get back into that.

I want to announce at this point, it is my intention to complete the first round of questions of the members and then I have got two documents that I want to—one I want to get into the record, and one I want to ask you questions about.

Then we will take a break for lunch, but I do want to get some discussion of these two documents before we take that break.

Now, I recognize the gentleman from Michigan.

Mr. **Albosta**. Thank you, Mr. Chairman.

I want to ask the witness, in view of your strong support for President Reagan, as indicated by your earlier testimony, how quickly your appointment received political clearance from the White House, why would the White House want you to take all the blame for the alleged EPA mismanagement of the Superfund Program by firing you? Particularly in view of how good a job you have stated yourself that you have done?

Ms. **Lavelle**. That is a hard one to resolve, Mr. Albosta.

Mr. **Albosta**. Don't you have somewhere in the back of your head though that must say, tell you something?

Ms. **Lavelle**. I think it is quite a disappointment in our political process and quite a disappointment in what I thought to be friends and people who knew me and who I knew.

Mr. **Albosta**. It would seem to me like they have singled you out for some reason and are trying to cut the administration's losses regarding all the bad publicity about what has happened at EPA.

If I were you, it seems to me like I would be somewhat resentful of being singled out and being the scapegoat for this particular cause, if you will.

Ms. **Lavelle**. I felt a lot of things, I guess, most of it is just shock.

I can't comprehend why it is happening.

Mr. **Albosta**. Didn't you say earlier in your testimony that approximately 2 months before you were fired that you felt that you were not receiving proper attention from the Administrator? Wasn't anything gathering in your mind at those times that somehow they were trying to push you aside for whatever reason?

You must have some idea what those reasons are.

Ms. **Lavelle**. I noticed the Administrator was not meeting with me as much and was avoiding—this sounds ridiculous—but avoiding eye contact in our discussions, but I thought, I mean I knew I was doing a good job and I am the type of person, perhaps I have a blind side; we all do, but——

Mr. **Albosta**. Do you think possibly your job—you were doing your job too well? Would that be your opinion?

Ms. **Lavelle**. That is a consideration. I don't know.

Mr. **Albosta**. Who would that hurt, the administration? Somebody from the business community, perhaps?

Ms. **Lavelle**. Well, for the record, the business community was pressuring me to get these sites cleaned up as much as the environmental groups. So I don't think it was the business community. I don't understand.

Mr. **Albosta**. Let me refer on page 9 to where you talk about your strategy to negotiate settlements with companies responsible for chemical dump sites. Is it not true that those companies can be assessed treble damages under the Superfund law?

Ms. **Lavelle**. Yes, sir.

Mr. **Albosta**. If EPA has to use the Superfund to clean up a hazardous site?

Ms. **Lavelle**. Under the law, that is possible, yes, sir. Treble damages.

Mr. **Albosta**. Wouldn't it be to their advantage to want to close these cases once and for all?

Ms. **Lavelle**. Yes, sir; that is why I think they were willing to come to the table and negotiate. That was the club out there.

Mr. **Albosta**. You didn't feel it was better for the companies to sit down and negotiate a settlement rather than use Superfund so they could be assessed treble damages?

Ms. **Lavelle**. It wasn't a simplistic go-no-go decision. It was a weighting of 410 sites. We went through a decision analysis; what was the strength of our case; what was the corporate willingness to come in and negotiate and get this behind them. There were a number of factors that came into play.

What were the resources that I have at hand to initiate cleanup complementing those resources we had for enforcement?

So it was a management decision utilization of resources, utilization of the fund, $1.6 billion. I was trying to get as much cleanup as possible assuming my set universe is $1.6 billion.

So there were a lot of factors that came into play.

Mr. **Albosta**. That wouldn't necessarily be the amount of money in the Superfund you would have. It might be for any one period of time, 1 year, but certainly you were not limited, if I understand the Superfund properly, on the specific amount you could spend.

Ms. **Lavelle**. We were—Congress was to review the Superfund taxing mechanism at the end of 1984. Additionally, in my grand scheme for cleanup, I was considering cost recovery. In fact, we put in a factor of $17 million for 1983 in cost recovery, the scenario you just outlined, where it was either triple damages or something.

So I——

Mr. **Albosta**. If I could just ask one more question: I have Dow Chemical located in my particular district. According to a recent Washington Post article, it stated that you had at least 14 times met with someone from Dow Chemical Co. It would appear to me that from this article that it would be at least drawing some questions as to whether or not Dow Chemical Co. was a good company or whether they were trying to deny some kind of a deal with you or whatever.

They were more or less singled out. They were not the only company mentioned here, but they were singled out.

Ms. **Lavelle**. I would like to explain that.

It was the company, it was an individual.

Mr. **Albosta**. I want you to know, and I want the record to show that I believe Dow has done a reasonably good job, at least from everything that I know, they have tried to work in a reasonable fashion to give some order to whatever happens to their toxic materials.

Ms. **Lavelle**. Building on that, Mr. Albosta, particularly an individual example of that type of performance, Mr. Senkure talked Dow into incinerating 20 years ago and they have abandoned landfilling for quite a while now. As such, they are environmental leaders in this.

Mr. Senkure chaired a committee of the Chemical Manufacturers Association that dealt with toxic wastes, thus his name was often the contact point for me to meet with a number of other companies.

That is why I was saying these were not one-on-one meetings, but many groups of people.

Third, this approach of let's talk across the table, get these cleanups going, was a hard approach to sell to industry.

Dow was one of the companies that was willing to go with that kind of approach and get cleanup and was talking to their brothers and sisters in industries to sell them.

Mr. **Albosta**. We are running short of time. I have one more question.

When did you learn Mrs. Gorsuch/Burford had referred a matter about you to the Justice Department?

Ms. **Lavelle**. I learned that from the New York Times when I read it after I had been dismissed. There were two referrals of which I received a copy yesterday at the Senate committee; one was February 2, which I never saw, and one was February 8, I believe, which is the day after I was asked to resign.

So I have never seen any of those referrals until yesterday.

Mr. **Albosta**. Has there been a lot of friction between you and her in the last few months over this committee's request, our contempt citation and all the other things?

Ms. **Lavelle**. No; I would say the friction was between myself and Mr. Perry, but it was always, from my understanding of it, a professional point of disagreement but nothing personalized whatever.

That is why the whole thing came to me as such a shock.

Mr. **Albosta**. My time has expired.

Mr. **Levitas**. The Chair recognizes the gentleman from Minnesota, Mr. Oberstar.

Mr. **Oberstar**. Thank you, Mr. Chairman.

Ms. Lavelle, did you at any time outside of the EPA offices meet with any representatives, any firms, involved in any of the ongoing investigations or with legal counsel of such firms who were under investigation by EPA or who were involved in any of the hazardous dump sites under the jurisdiction of the EPA, and I am talking about incidents outside of those general meetings of luncheons, of associations and so forth.

Ms. **Lavelle**. None outside of—without counsel, none outside of any social or perhaps I was giving a speech to chamber of commerce and they happened to be in attendance and said something afterward, but no formal meetings without counsel.

Mr. **Oberstar**. You did have such meetings, but you had EPA counsel with you?

Ms. **Lavelle**. I am sorry, could you repeat the question? I am sorry.

Mr. **Oberstar**. You in your response said you met with counsel, so I was just picking up on that saying you did have such meetings as I described in my first question, but you met with EPA counsel present?

Ms. **Lavelle**. There were meetings on field cases where counsel for both sides was in the room, consistent perhaps with part of the negotiating process.

Mr. **Oberstar**. Could you describe one of those meetings for us?

Ms. **Lavelle**. Seymour.

Mr. **Oberstar**. Where did the meeting take place?

Ms. **Lavelle**. Eleventh floor of EPA. It was a large meeting room there.

Mr. **Oberstar**. At EPA. I was asking about meetings outside of EPA.

Ms. **Lavelle**. Oh, outside. None that I can—none that I can remember.

Just for purposes of clarification, you said nothing——

Mr. **Oberstar**. Meetings outside of EPA.

Ms. **Lavelle**. Outside EPA.

Mr. **Oberstar**. Not including the association-type lunches.

Ms. **Lavelle**. Fine. There were no such meetings.

Mr. **Oberstar**. At no time did you meet with any representative or any legal counsel of any firm under investigation by EPA or any firm that was involved in any of the hazardous wastesites under the jurisdiction of EPA outside of the Agency and outside of these or association lunches of which you spoke?

You did not have any meeting with any representative to discuss any matter under investigation or any aspect of their involvement in hazardous wastesites?

Ms. **Lavelle**. Nothing under litigation, no, sir. Not that I can remember. None.

Mr. **Oberstar**. None of those under litigation?

Ms. **Lavelle**. Right.

Mr. **Oberstar**. How about those matters not under litigation, but firms or representatives of firms which were associated with or involved with any of the hazardous wastesites under the jurisdiction of the Superfund or of RCRA?

Ms. **Lavelle**. Well, I am not trying to avoid the question. I am trying to answer it truthfully. I met with representatives, we would discuss generic issues. A lot of times it was pending RCRA regulatory approaches. There were general management discussions of how we can expedite site cleanup, but nothing specifically related to any sites were involved with them.

They would not do that. I would not do that. That was something for our attorneys to discuss.

Mr. **Oberstar**. What would you describe as a generic issue?

Ms. LAVELLE. Just basically—this is about the depth of it, is EPA really serious about wanting to negotiate? Will you investigate the people to talk with us across the table to tell us what the case is and so forth, and I said yes, we are willing to negotiate. We want these sites cleaned up. I can't think of anything more in depth than just that general management philosophy of the program.

Mr. OBERSTAR. In those meetings, what were you trying to accomplish?

As you have described it, discussing generic matters about how EPA will conduct its activities?

Ms. LAVELLE. Well, oftentimes—this is outside the agencies—I was on a field trip to learn how some of these technologies worked, where there were capital investments in alternative technology. So really the first priority as I traveled outside the Agency was not the sites; it was more from an RCRA experience-gathering aspect.

Mr. OBERSTAR. Did you have counsel present with you at any of those generic discussions?

Ms. LAVELLE. I don't know. No; usually counsel didn't travel with me because I saw this as kind of a speech mission that I had been given consistent with policy direction and I would go no further. That wasn't my role.

Mr. OBERSTAR. In any of those meetings that you had which we have just been discussing, could any of those meetings be construed as being ex parte meetings?

Ms. LAVELLE. Not in my undestanding of ex parte, no. In other words, it was client to client talking without benefit of having their attorneys there. No.

Mr. LEVITAS. The time of the gentleman has expired.

Mr. OBERSTAR. Thank you, Mr. Chairman.

Mr. LEVITAS. The Chair recognizes the gentleman from Pennsylvania.

Mr. EDGAR. Thank you, Mr. Chairman.

Ms. Lavelle, I apologize for not being here through all the opening comments that you have made. We have a very busy hearing schedule today. I have two rather general questions to ask in the beginning and then a couple of very specific questions.

My first general question, just in terms of an overview, can you describe briefly in your opinion what went wrong from the day you were hired to the day that you were fired; why are we at this point in history? Your opinion?

Ms. LAVELLE. Well, obviously I thought we were developing and implementing a management system to get results. So I thought we were doing what we should be doing.

However, my analysis of the situation is that while we were working so hard to get these results there were also forces—and I don't know who to attribute it to—but forces who perhaps wanted to stall us in getting these results.

In what way do you do that? You create a sense of insecurity with basic managers who are taking risks daily. I mean, if we are settling cases, we have our necks on the line; we are decision-makers. I mean that for all my senior managers. How do you do that?

You start leaking innuendo, rumor; you know they are really cutting a deal on this or that. This is the height of it; they take handwritten notes, stream of consciousness thoughts, intellectual freedom is gone now over there in that agency. Everybody at least in our program, it is almost a state of paranoia.

You can't think; you can't talk aloud with people in an exercise of intellectual exchange because the next thing you know you will be quoted for what they thought they heard and it will, you know, what did you mean by that, and then—it is just unbelievable.

Mr. EDGAR. How did that come to be?

Ms. LAVELLE. I don't know. I don't think it was any conscious organized group trying to leak documents, but I think that as a senior manager, the way I was moving was I am going to start reprimanding the employees that are taking this leaking activity and not allowing the intellectual freedom and I think that is what should have been done.

Mr. EDGAR. If you had it to do over again, given your experience, knowing what you know, knowing the ins and outs of the Agency, knowing the civil cases that you were primarily interested in dealing with, what would you do differently that would have perhaps changed the outcome?

Ms. LAVELLE. I think I would have more severely reprimanded those employees who might have been leaking these documents to the media. I might have also responded in a much stronger way to the media other than always in a—I think we are going that way; we were being more assertive in telling what the program was doing; where we were going, more sales approach. I was trying to put efforts into that.

Mr. EDGAR. Let me ask specific questions. Do you know who invented the term "enforcement sensitive"?

Ms. LAVELLE. Mr. Robert M. Perry.

Mr. EDGAR. Do you know when that term came into existence? Approximately when?

Ms. LAVELLE. Just recently.

Mr. EDGAR. I think it was about December 13 the first time I saw it in a memo.

Ms. LAVELLE. I was going to say late November.

Mr. EDGAR. Would it be your impression that it was invented or created to justify those documents that the administration and EPA did not want this committee to see?

Ms. LAVELLE. Yes; that was the term ascribed to them.

Mr. EDGAR. And specifically what are the documents that you think this committee should not see?

Ms. LAVELLE. That was never my position. I think there is a way to share things with Congress. I think there are certain documents for the public good that should not be shown to the public until, for instance, witnesses in potential criminal actions. That would be a case in point, but there are methods by which that information can be shared with oversight and with Members of Congress.

That whole decisionmaking process on what was enforcement sensitive, and so forth, and all the dealings with the subcommittee and others, was taken out of my hands. That was—we basically shipped all of our documents over and that was all handled in Perry's shop.

Mr. EDGAR. Did you resent the fact that Mr. Perry had control over that decision?

Ms. **Lavelle**. I don't think I resented it. I thought it was a poor way of handling it, but I had said my piece and, you know, the boss had made the decision.

So I went on to other things that I had to do.

Mr. **Edgar**. Thank you.

Mr. **Levitas**. The time of the gentleman has expired.

Mr. **Edgar**. Thank you, Mr. Chairman.

Mr. **Levitas**. In connection with that, I think it is fair to Ms. Lavelle to state that in a meeting with Ms. Lavelle, myself, and members of the subcommittee staff on September 29 of last year, Ms. Lavelle indicated to the subcommittee, and to me, that she was perfectly willing for the subcommittee to have access to her files and to make the information available to us for purposes of conducting our investigation. Thereafter, of course, others in the agencies or in the administration reversed that representation to me that Ms. Lavelle had made.

One quick question, Ms. Lavelle.

Is one of the reasons that you adopted a strategy of emphasizing negotiation because you felt that much of the legal work prepared by Mr. Perry's office was inadequate and insufficient to get results in court?

Ms. **Lavelle**. As a nonlawyer, that was a contributing factor.

Second, the fact that our substantial proof in many of these cases was not that strong; and I guess third, the fact that many of the attorneys who were being assigned to our cases really did not have much courtroom experience.

Mr. **Levitas**. We will probably get back to that.

I want to show you a document, Ms. Lavelle, and ask you some questions about it. If the clerk would make a copy of this available, identify the document as one that is stamped September 17, 1982, the letterhead says "United States Environmental Protection Agency,

"Memorandum

"Subject: Potential Problem in Process and Potential Outcome of Determination of Cleanup Levels for Dioxin in Soil."

It is from someone named Edward Kurent, Acting Associate, Enforcement Counsel, to Michael A. Brown, Acting Enforcement Counsel, and you are discussed in this memorandum.

Mr. **Levitas**. My first question to you is, are you familiar with or have you seen that document?

Ms. **Lavelle**. I saw this document when I was before Chairman Dingell on a hearing regarding the Missouri dioxin cleanup.

Mr. **Levitas**. There are some things in here that cause me some concern and as I read it, this document starts off by saying the purpose of the memorandum is to inform you of several potential problems which may be developing in Rita Lavelle's office concerning the process and end results of determination of action levels—I won't try to pronounce the terms—popularly known as TCDD or dioxin.

At the bottom of the page the paragraph says, I am informed—talking about work that had been done in the chlorinated dioxin task force—I am informed that Dr. Arthur Palotta, Rita Lavelle's personal science adviser, a private consultant working directly for Rita, has injected himself into the decisionmaking process in a rather forceful way. He has performed a so-called risk exposure assessment that he claims indicated that exposure to 100 PPB, parts per billion, of TCDD in the soil would be acceptable; that is, no remedy is necessary below this level. This level is 10,000 to 100,000 times higher than enforcement precedents and seems to be substantially inconsistent with prior EPA statements.

Further along in the memorandum it says the Superfund people, the Office of Waste Programs Enforcement, that is your office, and my office are concerned, however, that the costs Dr. Palotta is addressing, he seems to—he gets the recommendations reversed. He has been extremely adamant and vocal in meetings because of the Superfund Office and Office of Waste Programs Enforcement work for Rita. They are reluctant to take on Dr. Palotta.

While I clearly cannot comment on the scientific validity of his position, I believe any change of position on the acceptable level of exposure to TCDD, particularly one which would expose little children, possibly pregnant women, to 100 ppb in soil, would probably appear to the public, the press and the Congress as ghastly. There apparently is heavy congressional interest in Missouri and since TCDD is one of the chemicals in Love Canal, we can expect a torrent of public criticism. I believe this would make the liquids in landfills decision look like a Sunday picnic.

My question is, did you ever see that document on or shortly after September 17, 1982, and what action was taken by you or people in your office in response to it?

Ms. LAVELLE. I saw the document after the document had been leaked to the Hill. We got it from the Hill.

Mr. Perry and Mr. Brown never chose to share this document with me. Obviously it was extremely upsetting to me when I saw it. I think that the author exercised very poor judgment in even constructing such a thing and writing it down. I can go into the whys if you want me to, but that is when I first saw it.

Mr. LEVITAS. He says at the end:

"I suggest some discreet legal advice to Rita by you or Mr. Perry might prevent a serious problem."

Did you ever get any discreet legal advice about this?

Ms. LAVELLE. Discreet legal advice? The discreet legal advice was my hearing in front of Mr. Dingell. I do not mean to be facetious but just to set the record straight, I think attorneys certainly have a very important role in the Agency's procedures and that is to comment on the legal strength or weakness, et cetera, there are a number of functions that they have. But here he is making a judgment on a member of my staff, on the performance of a member of my staff in a function that was in no way, shape, or form reminiscent of the truth at all.

Dr. Palotta is a board-certified toxicologist and let me tell you, Mr. Chairman, that is one of the problems. We can't get the skills we need over there. It is hard to hire some of these people. But Dr. Palotta is a board-certified toxicologist; yes, he is on my staff, and yes, he was one of the people helping me in trying to make this decision.

To say that he has my ear, et cetera, et cetera, is insulting.

I had three groups review those—the due risk assessments—independently, which was also brought to me as part of the decisionmaking process.

The comment that it would reverse enforcement standards is a critical comment and perhaps one that should be laid out before the subcommittee.

We were working—and the Agency is in need of good risk assessments. Scientists are learning a great deal more every day. There might be acceptable limits of some contaminants, acceptable from the standpoint of public health and the environment, safety of the environment.

That was the sort of discussion that was going on. For an attorney to inject himself in this sort of an unprofessional manner was totally disgusting to me.

However, I, ironically, perhaps very stupidly, defended Mr. Kurent. He was brought to the Administrator to be fired because of this memo. I am the one that went up and said, look, if I am preaching that we have to have an open group over here that will allow intellectual freedom, people can speak their minds, albeit I think he used extremely poor judgment, this certainly is not the type of thing we want to dismiss employees for. Let's work with him so that next time around this is done in a more professional manner.

Mr. Levitas. He got in hot water for writing this memorandum, you are saying?

Ms. Lavelle. Yes.

Mr. Levitas. And you defended him?

Ms. Lavelle. Yes.

Mr. Levitas. Let me tell you my interest in this memorandum because there are many levels at which Members of Congress and the public could be very concerned about what is said in this: the role of Dr. Palotta, the alleged degradation of enforcement standards, the exposure of health hazards to small children and pregnant women, all of that.

In September 1982 a hot item, a memorandum of this sort, specifically relating to your responsibilities and people working for you, was available in the Agency. You didn't know about it. You found out about it from Congress.

Now, what does that say about management in the Agency and who is in charge?

Ms. Lavelle. I think it says that we have a management problem.

Mr. Levitas. That memorandum is extremely disturbing because when I read it for the first time some time ago, it threw up a red flag and said, if you didn't know about that memorandum circulating around, as significant and, to use his word, "ghastly" as his conclusions were, then my question was, who is in charge?

Who made the decision not to show you that, Mr. Perry, Mr. Brown? Did you ever find out?

Did Mrs. Gorsuch/Burford see this before you did?

Ms. Lavelle. I do not know, I do not know. I think it is symptomatic of the problems with our shop, with the two shops. This is typical of the type of dribble which goes out of Perry's shop and he kept telling me, oh, I do not know anything about it. Whenever I would find out about it, I would be on the Hill confronted with memos like this.

Mr. LEVITAS. You see, Ms. Lavelle, you were operating in charge of, to quote Mrs. Gorsuch/Burford: "the most important new program at EPA."

Our concerns, going back over a year now, were that for some reason or other it wasn't being managed properly and we couldn't find out why. With memorandums of this sort circulating around and you didn't even know about it, surely that must be one of the indicia that it was not being managed properly.

Ms. LAVELLE. Yes, sir.

Mr. LEVITAS. Let me move just for a moment to the infamous memo, the one that you discussed briefly with Congressman Snyder.

You have testified that this was not your memorandum but was prepared for you or put into your word processor by someone else.

Did you know this was being put together before you actually saw it? Had you given directions to have it prepared?

Ms. LAVELLE. What I had asked for, Mr. Chairman, Mr. Daniel told me, I am going to say about December 28, that indeed I would have my meeting with the Administrator with Mr. Perry present to discuss these management problems, some of which you just pointed out.

Such a meeting then would occur the first day we were back after New Year's, so I am going to say about the 3d or 4th in there.

On or about December 28 I asked Mr. Ingold, consistent with the way I do things, to go to the various office directors and staff, et cetera, and start gathering up some of the notes on some of these problems as they were occurring or—that was it.

He did that. This is what he did. He didn't even edit it. The meeting was called off, the Administrator was ill, and as such the meeting did not occur. So he never even edited it. It was just kind of as he related to me, he just entered this information and never thought to edit it. He really did not put further work into it.

Mr. LEVITAS. Could you be a little bit more precise as to the nature of your directions to Mr. Ingold as to what it was you wanted him to put together for you?

Ms. LAVELLE. Just options and points for me to bring up to the Administrator in terms of management problems that we were having with the Legal Enforcement Counsel's Office.

Mr. LEVITAS. A memorandum of——

Ms. LAVELLE. Not a memorandum, sir.

Mr. LEVITAS. Talking points?

Ms. LAVELLE. Right.

Mr. LEVITAS. For purposes of discussing with Mrs. Gorsuch/Burford such problems as you were encountering with the Enforcement Counsel's Office?

Ms. LAVELLE. Yes, sir.

Mr. LEVITAS. Did your directions indicate or had your prior conversations with Mr. Ingold revealed any of the concerns or attitudes that you had?

Ms. LAVELLE. I really did not speak with Mr. Ingold that much. I dealt mostly with my office director so I suggested—not to the office director but that he go to their staffs to start gathering up some facts. That was how it came about.

Mr. LEVITAS. Did you give him any indication of what it was you were trying to demonstrate in your meeting with Mrs. Gorsuch/Burford as to the problems?

Ms. LAVELLE. I said that we have management problems between the two offices, these memos coming from them were almost a daily barrage, many of which I would never see, some of which I would see. There was a demoralizing effect on my people. So I wanted some of this documented.

Mr. LEVITAS. Let me ask you this, leaving aside what words were chosen, without getting into the specific wordage—did the points that Mr. Ingold put into this infamous memorandum generally reflect your concerns and views of the matter?

Ms. LAVELLE. Let me just scan this.

Not really, sir. I would not say they were what my problems were. That is not to say I didn't have problems, but these were not what the problems were.

Mr. LEVITAS. The gentleman from New York.

Mr. MOLINARI. Earlier, Ms. Lavelle indicated that Mr. Ingold was in the room.

Is he still here, Ms. Lavelle?

Mr. BIERBOWER. Yes.

Ms. LAVELLE. Yes, there he is.

Mr. LEVITAS. Yes, he is here.

Mr. MOLINARI. I would like to request that Mr. Ingold testify at the conclusion of Ms. Lavelle's testimony. I think he would be able to offer important testimony to us on this issue.

Mr. LEVITAS. I think that is true.

Do you anticipate being here for the remainder of these proceedings, Mr. Ingold, and would you be available to answer questions at that point?

Mr. INGOLD. Yes, sir.

Mr. LEVITAS. Thank you, Mr. Ingold.

Now, if you would not accept the general characterization of the problems as evidenced by Mr. Ingold's efforts, wherein would you have differed?

Let me give you a specific illustration. There is reference here to the Chem-Dyne item.

Ms. LAVELLE. Yes.

Mr. LEVITAS. It says the first major voluntary industry settlement in which 112 companies contributed $2.3 million for surface cleanup in Hamilton, OH, and it proceeds to characterize that settlement. Also the role Mr. Perry played in claiming credit for it and the memorandum's assertion that it really wasn't Perry, it was OSWER that did the job.

Would that have been a correct or incorrect characterization of your feeling about that matter?

Ms. LAVELLE. There was a meeting with the major leaders of the team from those companies that eventually settled in the Chem-Dyne case. In that meeting there were representatives of Justice, Mr. Perry was there, as was myself and Mr. Lucero. I think Mr. Brown was there also.

There were critical decisions that had to be made as to whether we would proceed or not in order to settle the negotiations.

I just hate to bring all this out in public but I just think that he conducted himself in a rather unprofessional manner in that the manner in which it was conveyed, the ultimatums were conveyed, et cetera; that just is my personal reaction.

Mr. LEVITAS. The reason I am focusing on this is that it is tremendously important from your point of view, from our point of view, and from the public's point of view to understand, a memo is being prepared or talking points are being put together for you to have a meeting with Mrs. Gorsuch/Burford to resolve these increasingly severe management problems, communication problems, the delays that are being attended on this program because of differences between you and Mr. Perry.

So you are putting together talking points, or Mr. Ingold is putting together talking points, in order to communicate something to Mrs. Gorsuch/Burford, and you are trying to, it seems to me the memorandum or talking points are trying to communicate to Mrs. Gorsuch/Burford, if they were ever used, certain things about what happened on the Chem-Dyne site, what OSWER's responsibilities and efforts and successes were, and what Mr. Perry's role was.

All right.

The first sentence says, OSWER had to resist efforts of Perry and his staff to scuttle negotiations with responsible parties at the last minute.

You are trying, it seems to me, or the memorandum is trying to say, here you had a good deal, and Perry was trying to shoot it down. That is just a common language interpretation of those words it would seem to me.

Is that a fair characterization? Did you feel that way?

Ms. LAVELLE. That I do not think is the characterization of my understanding of the events.

I do not remember what they were, but I am going to say there were three or four points of contention between our side and their side.

Mr. LEVITAS. Was that one of them, that he tried to scuttle negotiations?

Ms. LAVELLE. The manner—first of all, I think an attorney-client relationship, he is the attorney, I am the client and we needed, as such he should have been arguing for what the particular policy calls were that I made on these three or four points.

Mr. LEVITAS. But instead of doing that, he somehow tried to—tried to scuttle those negotiations?

Ms. LAVELLE. It was basically in the form of an ultimatum rather than here is our room, this is our bottom line. So I just thought it was unprofessionally communicated and should have been done in a better way, and almost resulted in the complete scuttling.

Mr. LEVITAS. The next sentence is the agreement is a landmark and generally acknowledged as such in the regulated community.

Did you consider the agreement a landmark and, so far as you knew, was it generally acknowledged as such in the regulated community?

Ms. LAVELLE. Yes. I'll tell you why. It was our first multiparty negotiated settlement.

Mr. LEVITAS. Then the memorandum or the talking points go on to say that Perry at the White House and in meeting with industry now claims responsibility for this success, but the fact is that he resisted settlement throughout, opting always for litigation. Is that generally correct?

Ms. LAVELLE. Yes.

Mr. LEVITAS. Then it says word around the industry is that OSWER delivered the agreement despite Perry, even though he is taking the credit.

Ms. LAVELLE. I do not know about that but——

Mr. LEVITAS. You didn't think that OSWER was—that Perry was trying to take credit for this multiparty, first major voluntary industry multiparty settlement?

Ms. LAVELLE. I know he was taking credit for it as were a lot of people, consistent with that being the right management approach I thought, but I do not think there was any feeling in industry that one person did it at the expense of another, which that kind of indicates, that language.

Mr. LEVITAS. The next item refers to the Seymour, IN, site, described as one of the largest settlements to date in which industry agreed to a $15 million surface cleanup and has since contributed to subsurface cleanup as negotiations continue.

Then it says Perry claimed the major credit for the initial settlement. He told Anne Gorsuch/Burford and the White House that he would bring the deal in. The fact is that OSWER managed day-to-day negotiations with most of the legal details being handled by the Department of Justice.

Now again it seems to me that the thrust of what is being said is that here OSWER, Rita Lavelle and her people, were really doing the work but Mr. Perry was now trying to get credit for doing it.

Is that a fair characterization? Would you agree with that, that that was what was happening.

Ms. LAVELLE. It is fair to say that our people and Justice carried the major workload on Seymour.

Mr. LEVITAS. Let me tell you what runs through this part of it, what runs through it is as I read it, these talking points now, which apparently you generally agreed with, and if you don't please, please let us have the points at which you disagree, is that OSWER and sometimes Justice were working on getting these settlements, Perry was looking more to litigations, on two occasions nearly scuttling discussions, required a major effort to bring the settlement together, and—I won't go on with the last sentence which is the judgment here, but was that the perception that you generally felt as evidenced by these talking points?

If not, what was your perception?

Ms. LAVELLE. Mr. Chairman, I think what this points out is that there was a change in direction. The program office basically wanted these sites cleaned up. We figured the best way was to negotiate. There were attorneys in Mr. Perry's shop working hard on this type of approach. There were attorneys at Justice as well as the technical people in my quote unquote enforcement section. This was a change. This was hard. This was traumatic.

In the negotiation process, as you know personally, one keeps pushing to limits and there is a judgment call. Am I going to cut it off now or not?

Every time that it would be brought to our level to either Mr. Perry or myself, I guess I kept giving that extra let's keep talking here, there has to be a way to figure this out. And he would go to the extreme and there would be a heated exchange. But I think that's good proper disagreement and so I am just trying to characterize it that way, the day-to-day activities.

Mr. **Levitas**. I understand.

Would these two items I have just mentioned, and the Waukegan Harbor referred to in here, also, would you consider those settlements as accomplishments that were obtained through efforts of OSWER?

Ms. **Lavelle**. It was the team approach, there were a lot of people involved but I would definitely say it was the policy push from our office, or direction.

Mr. **Levitas**. And you would consider it an accomplishment or an achievement?

Ms. **Lavelle**. It is an EPA accomplishment, yes, consistent with the policy as you understood it from—on high.

Mr. **Levitas**. From on high that you were trying to carry out?

Ms. **Lavelle**. Yes.

Mr. **Levitas**. Let me tell you what disturbs me about this memo or talking points and maybe we should think about it over lunch, and maybe Mr. Ingold can contribute to this at a later point today.

Here are talking points being put together at your direction which we have now I think pretty well established are generally consistent, leaving aside the word "acknowledge," with your views of the matter.

They were consistent with your understanding of the policy that Mrs. Gorsuch/Burford and the EPA was trying to implement.

As I read this memorandum or talking points, the thing that struck me was these successes, these achievements, these accomplishments, in each instance were considered or deemed to be accomplishments and successes because they were acknowledged as such in the regulated community; and that in meetings with industry, Perry now claims responsibility for the success, or that word around the industry is that OSWER delivered despite Perry even though he is taking credit.

So that the standard of gauging success or achievement was the view of that agreement or settlement by the industry, by the regulated community. The word "public" never appears in this document anyplace. The words "public health" or "public interest" never appear.

In trying to make a case in talking to Mrs. Gorsuch/Burford about your successs, whoever either put together or endorsed these talking points seems to have left the public outside altogether and if that was indeed reflecting the policy of the agencies at that time as given by Mrs. Gorsuch/Burford, then I think we are getting to the point of where this thing went wrong, as one of my colleagues said earlier.

That is why I think when we come back after recess we may want to pursue this a little further. I think this is really getting at the heart of the problem, because someplace in trying to explain to the Administrator of EPA, why you needed to have a clearer line of authority, why it was important for you to be able to do your job and carry out the policy, the word "public" someplace should have been mentioned. Why it wasn't I think is very revealing of the policy that was coming down to you.

I think perhaps we ought to get into that later this afternoon and maybe Mr. Ingold can share some information on that concern as well.

The Chair would like to suggest that we have a recess for lunch. I know the people at the witness table could use that break. I know members are expressing some concern to me.

Let's recess until 2 o'clock; at this time we will reconvene.

Whereupon, at 1:17 p.m., the subcommittee recessed, to reconvene at 2:00 p.m., the same day.

AFTERNOON SESSION

Mr. LEVITAS. The subcommittee will please come to order.

We will continue now with the testimony of Ms. Lavelle.

Ms. Lavelle, before I recognize my colleagues for further questions, I wondered if you had any further objections, or thoughts, or comments to make on the point that I left us with as we recessed a little while ago.

Ms. LAVELLE. Yes, Mr. Chairman. For the record this approach which again I did not author, did not dictate, is certainly incomplete thought processes of some member of my staff.

I think it represents a frustration of two staffs but the philosophy throughout which you so well pointed out, the primary constituency would be only the business community or primarily the business community, is not the way we conduct business over there.

Our constituency is the American public and the decisions that we made and continue to make I would imagine are in the public interest. My decisions were all with the thought in mind of getting effective environmentally sound site cleanup as soon as possible. I appreciate the opportunity to be able to state that so we did not leave that impression at all with anyone. Because it is sad that this incomplete innocuous totally nonrepresentative item has led to such overreaction.

Mr. LEVITAS. I think it would be appropriate to put that memo or these talking points into the record at this point. Without objection, the infamous memo will be made part of the record.

[The memo referred to follows:]

CHEM-DYNE (THE FIRST MAJOR VOLUNTARY INDUSTRY SETTLEMENT IN WHICH 112 COMPANIES CONTRIBUTED $2.3 MILLION FOR SURFACE CLEANUP AT HAMILTON, OH)

OSWER had to resist efforts of Perry and his staff to scuttle negotiations with responsible parties at the last minute. The agreement was a landmark and is generally acknowledged as such in the regulated community. Perry at the White House and in meetings with industry now claims responsiblity for the success, but the fact is that he resisted settlement throughout, opting always for litigation. Word around the industry is that OSWER delivered the agreement despite Perry, even though he is taking the credit.

SEYMOUR, IN (ONE OF THE LARGEST SETTLEMENTS TO DATE, IN WHICH INDUSTRY AGREED TO A $15 MILLION SURFACE CLEANUP AND HAS SINCE CONTRIBUTED TO SUBSURFACE CLEANUP AS NEGOTIATIONS CONTINUE)

Perry claimed the major credit for the eventual settlement. He told Anne Gorsuch and the White House that he would bring the deal in. The fact is that OSWER managed the day to day negotiations with most of the legal details handled by the Department of Justice. At the generators' request a meeting was arranged with Perry and RML. Attendees included IBM, Western Eelectric, Cummings and NCR. Despite a three-hour pre-biefing on settlement discussions, Perry took a hard line beyond previously agreed limits, nearly scuttling discussions. It required a major effort to bring the settlement together. Private, attendees expressed great alarm at Perry's lack of skill.

OMC (WAUKEGAN HARBOR)

After a long period of time, OMC and Monsanto were persuaded by RML that EPA might seriously consider a new settlement offer. When their attorneys arranged a meeting with Perry, no OSWER representative was invited. Perry rejected the first proposal and seriously alienated the companies (according to them). The Region has not managed to have the Assistant U.S. Attorney make another request for a new offer.

OTHER PROBLEMS

He is systematically alienating the primary constituents of this Administration, the business community.

He wanted to hold up the 400 site National Priority List because he hadn't seen it yet.

He fails to consult with the program offices, and their documents are handled arbitrarily.

Carney—Set us up and didn't tell us until the last moment; bootlegged copies were the only thing that saved us. Going to use it to embarass RML.

No advance information—either very imcompetent or coup.

Inconsistencies in approach to Hill on sensitive documents.

Perry's friends are at Justice.

Helping to set Gorsuch up. The things she needed to be protected were not there. No thinking, no planning. Failed to get any DOJ signatures on the contempt documents.

Mr. **Levitas**. Let me ask you one other question. You testified earlier today that the reference, something like "Memo to W.H."——

Ms. **Lavelle**. Yes.

Mr. **Levitas** [continuing]. Which was interpreted by some as meaning memorandum to the White House and you say that was not the case, but rather I think I recall either here today or yesterday you said it was a memorandum perhaps to W.H. [William Hedeman].

Ms. **Lavelle**. That is what he told me, it was incomplete and he would take it by William Hedeman with the thought of developing something intelligent for me to go upstairs with.

Mr. **Levitas**. Why would you write a memo to W.H. [William Hedeman], rather than to E.L. [Eugene Lucero] or something of that sort? Why would that memorandum which talks to the problems that your Agency was having, or your part of the Agency was having with Mr. Perry, why would you as the Assistant Administrator be writing a memo to Bill Hedeman as opposed to Gene Lucero or anybody else? I didn't understand that.

Ms. **Lavelle**. First off, I wasn't writing a memo, OK.

Mr. **Levitas**. OK.

Ms. **Lavelle**. Second, it read in the index, "Memo to W.H.," OK? So, a. I wasn't writing the memo; b. W.H. [William Hedeman]—

that is just conjecture having talked it over later with Mr. Ingold—he is in charge of the Superfund Program.

As such, Mr. Hedeman had some problems with Mr. Perry's shop. We did as a total program office. My three office directors are Mr. Lucero, Enforcement in RCRA and Superfund; Mr. Hedeman for Superfund; and Dr. Skinner for RCRA.

Mr. LEVITAS. What were Mr. Lucero's responsibilities?

Ms. LAVELLE. He is in charge of enforcement for both programs and as such an office director.

Mr. LEVITAS. If Mr. Ingold was the person who used that terminology we probably ought to ask him the question but I was just curious why Bill Hedeman as opposed to Gene Lucero, particularly since the items that appear to be addressed here would be more appropriate if you had to pick one or the other, I would have assumed that Lucero would have been the proper one. But we will get to that.

Let me say this and then I will recognize my colleague, the gentleman from New York. There are a number of other areas that I want to get into throughout the afternoon. I want to talk some about the Seymour—I am telling you this so you can begin to think about it—the Seymour settlement, the question of political considerations and political activities and I will want to ask you some questions about part of a discussion that we heard on a tape recording that was provided to us the other day that I would like to find out if there is anything—if you knew of any reason why that type of discussion would have occurred.

Those are some of the things that I would like to get into later on, but at this point I want to recognize my colleague, the gentleman New York, Mr. Molinari.

Mr. MOLINARI. Thank you, Mr. Chairman.

Ms. Lavelle, I would like to ask you some questions concerning the exchange of correspondence between Mr. Perry and yourself. Before I do I would like to give you the opportunity to have copies of them, in case you don't.

Ms. LAVELLE. Sure.

Mr. MOLINARI. The first one is dated January 6 and it was addressed to you from Mr. Perry.

Ms. LAVELLE. I don't have it as yet.

Mr. MOLINARI. You don't have a copy, OK.

The clerk has provided you with that copy now.

Ms. LAVELLE. I am familiar with that.

Mr. MOLINARI. You received that from Mr. Perry?

Ms. LAVELLE. It is from me to Mr. Perry. Which am I looking at?

Mr. MOLINARI. I want to go back to the one dated January 6. It is prior to that one in the package.

Ms. LAVELLE. Right.

Mr. MOLINARI. Are you familiar with it?

Ms. LAVELLE. Yes.

Mr. MOLINARI. You received that?

Ms. LAVELLE. Yes, sir.

Mr. MOLINARI. Now, he makes reference to nine boxes of files which, I understand, he states contain documents that are not only enforcement sensitive but also enforcement confidential.

Ms. LAVELLE. Yes.

Mr. **Molinari**. Then, at the conclusion of the memorandum on the second page he indicates that he wants you to retrieve those nine boxes and to resubmit or review only those that are labeled "enforcement sensitive."

Can you give me your impression as to why he was taking that action?

Ms. **Lavelle**. If you give me a second to review the response.

Mr. **Molinari**. Surely.

Ms. **Lavelle**. Why he said that, why the nine boxes?

Mr. **Molinari**. Yes.

Ms. **Lavelle**. OK. My interpretation of that is that we did send him nine boxes of files. The nine boxes of files he deemed had not been—what do I want to say—gone through well enough so as to do a preliminary screening as to what was potentially enforcement sensitive. Our response is——

Mr. **Molinari**. I don't want to get to your response yet.

Is it your impression he was trying to tell you that you didn't follow the criteria that he set forth for labeling documents enforcement sensitive?

Ms. **Lavelle**. Yes, sir.

Mr. **Molinari**. Who coined the expression "enforcement confidential"? We have heard the term "enforcement sensitive" used a lot in the last few weeks, but enforcement confidential, where did that come from?

Ms. **Lavelle**. Mr. Perry.

Mr. **Molinari**. What was that supposed to cover as opposed to that which is enforcement sensitive?

Ms. **Lavelle**. There was a criteria developed, in other words these would be confidential items and listed and such when turned over to Congress. They would be turned over to Members of Congress but they would be stamped "confidential" on top.

Mr. **Molinari**. So these documents as you understood it would be provided to us without forcing us to go to any extraordinary procedures? Is that your understanding?

Ms. **Lavelle**. That was my understanding, however they would be handled in a confidential manner.

Mr. **Molinari**. Now, if you look at the last sentence before the last——

Ms. **Lavelle**. On the first page, sir?

Mr. **Molinari**. No; on page 2, the same memorandum. He says, in addition, "the document description or rationale for the categorization as enforcement sensitive may need to be modified upon review."

What type of modification was he talking about?

Ms. **Lavelle**. Well, I think the frustration through all this is the definition of "enforcement sensitive" kept changing. That was the frustration from our office so basically we made the decision that anything we thought——

Mr. **Molinari**. Let me stop you there. Who was responsible for changing that definition.

Ms. **Lavelle**. Mr. Perry. He was totally in charge of all this effort.

Mr. **Molinari**. How many times was the definition changed?

Ms. **Lavelle**. I really cannot help you there. I am not trying to avoid you but I am aware of probably three times it was changed.

Mr. **Molinari**. These instructions talk about changing the criteria, was this something you received in writing?

Ms. **Lavelle**. I never saw it in writing, no. Mr. Lucero would probably be more helpful to you because he was the one handling for my office.

Mr. **Molinari**. You are on the stand right now, and this memorandum is addressed to you and not Mr. Lucero. We will get to Mr. Lucero again but I would like to get your interpretation so we can make sense out of it.

Ms. **Lavelle**. There was an Administrator's memorandum I believe in late November which outlined what documents or what the procedures would be in order to determine whether an item was potentially enforcement sensitive. That was in writing and I was aware of that.

Mr. **Molinari**. It is your understanding that Mrs. Gorsuch/Burford prepared that?

Ms. **Lavelle**. I think Mr. Perry prepared it for her signature but as I remember it was the Administrator's signature.

Mr. **Molinari**. I was under the impression that it was Mr. Perry. I think he testified before the subcommittee as a matter of fact that he prepared a five-page document listing criteria as established by him for documents to be classified enforcement sensitive. I believe we had a copy of it for the record.

Ms. **Lavelle**. Yes, that sounds like the item.

Mr. **Molinari**. Again getting back to the question of modification, what was the final result as you understand it? In what way was the definition changed? Can you recall that?

Ms. **Lavelle**. Well——

Mr. **Molinari**. What changes took place from the first time you had a definition of what was enforcement sensitive? The reason I ask is that we had a great deal of frustration in getting these documents and we had a tremendous variation in the estimated numbers of them.

Now we are learning as we go along that indeed there were different times when there were different definitions. So now I am trying to determine your final understanding after Mr. Perry or Mrs. Gorsuch/Burford changed the definition. What was the final definition and how did you in your office make a determination that documents were enforcement sensitive?

Ms. **Lavelle**. We kept referring to the Administrator's memorandum in late November and I remember, authored by Mr. Perry to the best of my knowledge, five or six pages, that sounds like the document you are describing, that was given to Mr. Lucero and to all the people in my shop to do a preliminary screening as to what might possibly be enforcement sensitive.

We then sent everything over to Mr. Perry's shop and that was his responsibility. It was not a program responsibility.

I cannot answer you on how that was being changed.

Mr. **Molinari**. Now, you answered Mr. Perry's memo.

Ms. **Lavelle**. Yes, I did.

Mr. **Molinari**. And you have a copy of that answer, which is a memorandum dated January 12. Is that correct?

Ms. LAVELLE. Yes.

Mr. MOLINARI. If I read this correctly, you were sending the documents to him so that he would make the final determination as to what was enforcement sensitive?

Ms. LAVELLE. Yes.

Mr. MOLINARI. Was that in keeping with his written or verbal instructions?

Ms. LAVELLE. Yes, sir.

Mr. MOLINARI. It was.

Mr. LAVELLE. It was.

Mr. MOLINARI. OK.

Ms. LAVELLE. I see cited in here it was the Administrator's memorandum, November 24, that I cited, if you look at paragraph 3.

Mr. MOLINARI. OK.

Ms. LAVELLE. That was the criteria that we used to do this preliminary screening for potentially enforcement sensitive documents.

Mr. MOLINARI. So now you and the people that work with you went through this ream of documents and you came up with nine boxes which you sent over to him as potentially enforcement sensitive material. Is that correct?

Ms. LAVELLE. Yes, sir.

Mr. MOLINARI. Then he shot them back to you and said you are not doing your job, in effect, that you sent him too much, and that you were to go through it again and follow the criteria set forth. What happened after that?

Ms. LAVELLE. I don't know what happened to the nine boxes after that.

Mr. MOLINARI. You had nothing to do with reviewing them, collating them, and reducing them?

Ms. LAVELLE. No, sir.

Mr. MOLINARI. Ms. Lavelle, can you tell us who Michael Brown is?

Ms. LAVELLE. He was Mr. Perry's deputy. He is now Acting Assistant Administrator for the position that I had held for hazardous wastes.

Mr. MOLINARI. When was he originally hired?

Ms. LAVELLE. Mr. Molinari, I am going to say about August to the best of my recollection. I would have to go back. I have no way of checking that, but it was about August. In other words, I was onboard working. I was put in April 1, so I will say it was about August or so.

Mr. MOLINARI. Would you characterize him as a political appointee?

Ms. LAVELLE. Yes, sir.

Mr. MOLINARI. How about Michael J. Murphy? Who is he?

Ms. LAVELLE. Mr. Murphy is a young attorney who was working in Mr. Perry's shop. He was one of several attorneys who were being laid off by Mr. Perry, and for what reason I don't know.

Mr. MOLINARI. Let me go back. What was his original function when he was hired?

Ms. LAVELLE. Attorney.

Mr. MOLINARI. Who did he work for?

Ms. LAVELLE. I believe Mr. Yamata, in Mr. Yamata's office.

Mr. MOLINARI. Did he work for Mr. Sullivan at any time, do you know?

Ms. LAVELLE. He may have. Yes.

Mr. MOLINARI. Where is Mr. Sullivan today? Do you know?

Ms. LAVELLE. I think he is in Washington; I don't know.

Mr. MOLINARI. Is he working at the EPA?

Ms. LAVELLE. No, sir, he does not.

Mr. MOLINARI. He was fired?

Ms. LAVELLE. He has been fired, also.

Mr. MOLINARI. OK. For what period was Mr. Brown hired?

Ms. LAVELLE. How long was Mr. Brown hired for?

Mr. MOLINARI. Was he hired for a specific term?

Ms. LAVELLE. I have no way of knowing that, sir.

Mr. MOLINARI. Do you know if he was terminated at that point by Mr. Perry? I am not talking about recent days, I am talking about some time ago, months ago?

Ms. LAVELLE. I am sorry, I don't know any of that.

Mr. MOLINARI. Did you ever ask for Mr. Brown to work for you?

Ms. LAVELLE. No, sir.

Mr. MOLINARI. I am sorry. I am mixing up the Michaels. Mr. Murphy I mean. Let's go back over this line of questioning. I am sorry I used the wrong name.

Mr. Murphy, he worked for Mr. Sullivan and Mr. Perry.

Ms. LAVELLE. Yes, sir.

Mr. MOLINARI. Was he hired for a specific term? That is the information I have received.

Ms. LAVELLE. Yes, sir; to my knowledge he was. His term was about ready to expire. We had a workload, obviously, with trying to prepare these documents to send them over to the legal office, and it came to my awareness that Mr. Murphy would be—was no longer needed and could, of course, be of use to me to help out with this process.

So I—I don't know the personnel procedures that were followed, but I basically got him for about 2 months.

Mr. MOLINARI. Was this with Mr. Perry's blessing?

Ms. LAVELLE. No, it was not. Mr. Perry opposed the extension.

Mr. MOLINARI. Well, now, why would you want to hire somebody and have a confrontation with Mr. Perry when you knew that he was opposed and obviously wanted to terminate Murphy's employment?

Ms. LAVELLE. In talking with Mr. Perry one on one I said: "Well, how strongly do you feel about this? I could use some help over here," and I guess it really wasn't that big a confrontation. I don't want to represent it that way.

He wanted an assurance that he would be let go when his contract ran out, which I understand, reading the papers, was done. So that was the commitment that I made.

Mr. MOLINARI. OK.

Ms. LAVELLE. It just looked like to me it was extra help, in fact, I remember a conversation saying: "Well, Rita, if you can use him, great, because I know you need the help over there."

Mr. MOLINARI. So he didn't have strenuous objections to your retaining him in your employ?

Ms. **Lavelle**. No.

Mr. **Molinari**. With respect to the enforcement sensitive documents, Ms. Lavelle, we have had a difficult time trying to get a count. I know it is still ongoing. Can you help us out and tell us to the best of your knowledge what the highest count was, until you left EPA, of the documents labeled "enforcement sensitive"?

Ms. **Lavelle**. I really can't. I just did not get involved in that. I was——

Mr. **Molinari**. It is out of your jurisdiction?

Ms. **Lavelle**. It was within my jurisdiction but I had Mr. Lucero totally in charge of it, and I trusted him to do a good job. He would update me from time to time, but I can't really remember any numbers to help you out.

Mr. **Molinari**. Just before we leave this subject matter, do you recall whether there was any discussion about the fact that too many documents were receiving this new label "enforcement sensitive" and that they should be cut down?

Ms. **Lavelle**. I would say——

Mr. **Molinari**. In effect, EPA was going overboard labeling almost everything as "enforcement sensitive"?

Ms. **Lavelle**. I was not privy to such conversations other than some comments from Mr. Lucero.

Mr. **Molinari**. OK. We will leave that, and I thank you for your answers.

I just want to cover one more area with you, Ms. Lavelle, and that concerns your prepared statement on the general policy that was pursued by yourself and others in settling claims against party defendants. I get the impression—looking specifically at page 9 in your testimony, if you want to make reference to it—that there was a great deal of disagreement about the approaches to enforcement. You have indicated today that you believe in trying to settle matters. In your statement you say drums and containers are corroding and leaking, citizens are alarmed and worried about their towns and the safety of their drinking water, and that something must be done quickly.

Ms. **Lavelle**. Yes.

Mr. **Molinari**. We all share that concern.

Apparently there was disagreement over policy at EPA from what we have heard you say today. You liked to negotiate and settle. Mr. Perry liked to litigate. Is that a fair statement?

Ms. **Lavelle**. Well, I think it is kind of an overstatement. We were——

Mr. **Molinari**. Please correct me then.

Ms. **Lavelle**. I am trying to think of how to do it. One of the main inhibitors to fund—I think Mr. Weiss brought this out, why didn't you just go out and clean up the sites and recoup—was the States didn't have their 10 percent.

Mr. **Molinari**. The matching share.

Ms. **Lavelle**. That is required under law. So I am looking at the sites trying to figure out how to clean them up and that is where the discussion would ensue as to whether we could go with an enforcement lead and, if so, how to go about the enforcement lead.

It was a growth process. We are only involved in this sort of internal managerial discussion for like the last 12 months basically.

Mr. MOLINARI. Let me stop you there if I may, please.

Ms. LAVELLE. Yes, sir.

Mr. MOLINARI. We are talking about 160 sites.

Ms. LAVELLE. 160, OK.

Mr. MOLINARI. How many of those sites involved States that didn't have the 10-percent matching fund? How many would you say?

Ms. LAVELLE. I would have to go back in my notes, but let me answer this way——

Mr. MOLINARI. Give us a rough idea.

Ms. LAVELLE. There is only 11 States that have a Superfund-type fund and to my recollection only 7 really had any money in it. Indiana, for instance, would not have collected revenues until 1984.

However, the seven that had the money were in States like New York and New Jersey who also had a lot of the sites. So I am not trying to avoid your question, I am just trying to answer to the best of my ability.

Mr. MOLINARI. I understand.

Ms. LAVELLE. We had kind of in our managerial scheme as to which sites we were going after, had peaked out and I was actively going to become involved in going to Governors and State legislators to help them come up with estimates so at least they could go and try to get their 10 percent. It is mostly a phenomenon of the Western States and Southern States.

Mr. MOLINARI. Do you think Mr. Perry's idea to litigate might have been prompted by the fact that so many States didn't have their share of the money to put up for the cleanup process?

Ms. LAVELLE. If we would have followed that scenario to litigate, the option is still no cleanup.

Mr. MOLINARI. You guessed the question I am getting to, which should concern every Member of Congress because of the fact that there are a number of States that do not have funds available. Let's look at the converse. Had they had the money available, would EPA have been able to collect more in terms of settlement from the parties with whom you negotiated?

Ms. LAVELLE. I guess theoretically we could have if we had gone for triple damages. The cost was equated to the cost to do the work in all the cases we had done thus far. So if you expand it to your theoretical thinking of going triple damages, yes. But I would have to caveat with how strong were our cases in being able to get triple damages.

Mr. MOLINARI. Wouldn't that have required litigation to collect treble damages?

Ms. LAVELLE. Yes.

Mr. MOLINARI. You would not be able to negotiate anything like treble damages, would you?

Ms. LAVELLE. No; but in order to litigate—this is interesting, an interesting aspect of the law. In order to litigate with the anticipation of going for triple damages, you have to file an administrative order which would have been a negotiating process. So some of those cases indeed that had been filed already without filing the administrative order, we call it at 106, those we could not go for triple damages, if I make myself clear. So it is a phenomenon of the law.

Mr. Molinari. Do you have any record of how many cases you were directly involved in that resulted in negotiated settlements?

Ms. Lavelle. In other words, those that I signed consent orders on. The total is 39, and I would say it is probably the 20's.

Mr. Molinari. Thirty-nine during the period you were employed or thirty-nine to date?

Ms. Lavelle. Thirty-nine to date, so I think it is about twenty.

Mr. Molinari. About 20 you were involved in yourself?

Ms. Lavelle. Yes, sir.

Mr. Molinari. Were these from the 160 sites that we are talking about, or did it cover others as well?

Ms. Lavelle. It may have covered some that were only in the 418 list. I would say I probably know all of them were on the 160 list.

Mr. Molinari. Would you have any recommendations, Ms. Lavelle, as to a change in procedures so that more money could be collected by EPA in dealing with the companies responsible for dumping toxic wastes throughout the Nation?

Ms. Lavelle. Well, I keep coming back to, I think, the ultimate goal is to get the sites cleaned up. Let me just share with you some of my observations.

A number of these sites, the one who I would have blamed was the owner-operator. They, frankly, are the ones that abandoned it. What we are doing is coming to responsible companies as defined under the law, responsible because they gave their waste to a disposal facility, and pit that against the fact that we need—it was an engineering problem, too.

We need new technologies to clean up these sites. We were learning from site to site. Something as simple as a carbon filtration column changed from site to site based on the contamination.

I think if our ultimate goal is to clean up these abandoned sites the way to do it is to involve private enterprise in getting this chapter of history behind us and to keep pushing them through a taxing mechanism or something, I don't know that we would achieve the ultimate goal. That is my observation.

Mr. Molinari. How many sites have been completed of those 39 that you mentioned before?

Ms. Lavelle. There are five completely cleaned up sites but let me caveat that. The reason is that of the 418 these were the worst sites in the country—347 of the 418 have documented major ground water contamination problems.

We are not allowed or we did not allow ourselves to count a site as completely cleaned up until the aquifer was cleaned up as well. When you have a situation like that you are talking 2, 3, 4 years, maybe even 10 years. So I think a more appropriate number are those where we had completed surface cleanups, drum removal, drying up surface impoundments, dikes that went bad, et cetera—we had 98 of those when I left. That is in 2 years or 5 months, however we start the time with the law.

That is a good record, I think.

In 1971, they have the long-term work going on where cleanup was underway. So we were moving.

There were 39 sites that this type of negotiation was leading to cleanup independent of resources from a program office that had to be devoted except for an oversight capacity.

So you start adding them up, that is a number of sites.

We also have 56 sites where we were negotiating, in negotiations in process when I left, so we were anticipating those being successful.

Mr. **MOLINARI**. Thank you, Ms. Lavelle.

Ms. **LAVELLE**. Thank you.

Mr. **LEVITAS**. Thank you, Mr. Molinari.

Mr. Andrews.

Mr. **ANDREWS**. Thank you, Mr. Chairman.

Before lunch today, you testified in response to——

Mr. **LEVITAS**. Excuse me, before you get started, I meant to do this earlier and I apologize.

I wanted the record to show, and Ms. Lavelle to understand, that for the most part we have not been directing many questions to the Stringfellow site as much as that is not altogether by accident.

My colleague, Congressman Dingell, who is chairman of the Commerce Committee and also the Oversight and Investigations Subcommittee of that committee, will be doing a very in-depth total examination of that site and the matters relating to it and as a result of our agreements with each other so that we are not going to be criss-crossing other committees in this matter and have a coordinated approach to the problem, we are avoiding getting into the Stringfellow site except to the extent that it might incidentally come up in the conversations.

I just wanted you to understand that.

Mr. Andrews.

Mr. **ANDREWS**. Thank you, Mr. Chairman.

Earlier today in response to a question from our chairman you testified, I believe, Ms. Lavelle, that there were three reasons why prosecutions have not been as active as you would like. I think you said that one of the contributing factors was Mr. Perry; another factor was that the proof in your cases, lawsuits, was not good; third, that many of the attorneys within your office had been reassigned or cases had been moved within the office.

Is that a correct characterization of your testimony?

Ms. **LAVELLE**. The third reason—no, I think it was that I was apprehensive they didn't have too much trial experience as I looked across the attorneys that were assigned to us.

Mr. **ANDREWS**. Wouldn't an additional reason for lack of prosecution maybe be your philosophy about whether or not many of these cases should be prosecuted? Yesterday before the Senate hearing you stated, and I quote: "I think that my role is to basically sell industry on an approach. When I talk to CEO's it was not dealing with any specifics of the litigation, it was just a commitment that we were willing as an agency to negotiate first, litigate second."

Where did you learn that kind of philosophy? Where did you feel you were charged with that type of responsibility to negotiate first and then litigate second?

Ms. **LAVELLE**. From the Administrator. I thought that was the philosophy we were supposed to be following.

Mr. ANDREWS. Don't you think there are cases that Congress fully intended that every letter of the law should be prosecuted to the utmost? And that you were charged in your role to ensure that those cases were prosecuted?

Ms. LAVELLE. Mr. Andrews, if you think of what I said, I didn't say they should not be prosecuted. What I was saying was they should be negotiated first, prosecuted second, but I never said, Do not prosecute. What I was trying to do was get site cleanup in the safest, environmentally safest and quickest manner possible.

Mr. ANDREWS. Not just to clean up the site but to prosecute the laws of the United States, that is your responsibility and it disturbed me greatly, Ms. Lavelle, that your response to my Representative colleagues' questions, all of these reasons why you couldn't prosecute, that your lawyers were not well trained; or the proof wasn't good enough to go to court; and that you were sort of forced into a box of negotiating settlements with these very businesses that you were talking with in this period of time.

I really wish you would tell me and this committee what basically your philosophy is as you approached many of these cases, some that had some criminal liabilities and exposures.

Ms. LAVELLE. In all deference, you are trying to over-generalize my statements. First of all, I was saying we are trying to use every authority given to us under the law. In the law it specifically cites voluntary agreements, administrative orders, orders on consent, and there are various authorities.

Superfund—I don't have to tell the members of this committee—is a very comprehensive law. It represents the growth and thinking of a lot of environmental law experience.

So they gave us all of these tools. Why not use all of the tools? I am certainly not afraid to prosecute. In fact, in the Seymour scenario, I was pushing for prosecution against every responsible party as we knew them. Mr. Perry and I differed on that approach as I left but it was as I said, an internal point of discussion.

Mr. ANDREWS. That is a good point, why did you settle that lawsuit. Why did you allow that case to be settled?

Ms. LAVELLE. First of all, the lawsuit has not been settled. It was just filed.

We negotiated a cleanup at Seymour, a surface cleanup at Seymour; 50 percent of the cost, 50 percent of the volume. Why did we do that? Because we had 50,000 drums, 98 silos of breaking down silos that we had issued 311 more than a year before, the winter before, to remove 10,000 drums at that point. My job was to get that site cleaned up. The State of Indiana would not have their 10 percent until 1984.

I think the negotiated settlement was a good one, indeed, it was reviewed by the U.S. district court and held in the public interest. But most importantly, the drums are being removed right now.

Mr. ANDREWS. You also testified that the ground water cleanup in those sites is the biggest, most troublesome, and most expensive part of cleaning up these toxic dumpsites.

Ms. LAVELLE. Yes, sir.

Mr. ANDREWS. Yet at the Seymour site some 171 companies that you settled with have no further exposure as I read the court's decree, and yet in addition to that your Agency has yet to determine the amount of cost to clean up the ground water in those sites.

Ms. **Lavelle**. Well, that is not exactly true.

We based our negotiations on an estimated cost for the surface cleanup and for the ground water cleanup. The total cost as we estimated was $30 million.

It broke out about 15 to 15, 15 surface, 15 ground water.

Now as I remember the settlement we got at Seymour, we had 24 companies that were responsible for 50 percent of the wastes, and settled out for the entire surface cleanup responsibility.

In addition, the 117-some companies that you cited were responsible for—again I don't have notes on this but it was like $3.5 million toward, contributing toward the responsibility for the ground water cleanup.

We still have another—again, my numbers are probably wrong—another 160 companies who were responsible for the rest of the ground water costs. As I left we were discussing how to pursue the remaining companies and I was pushing for total litigation. But it is a new approach. We have no experience in this sort of environmental law.

Mr. **Andrews**. Has a ground water survey been done on that site?

Ms. **Lavelle**. Preliminary survey was done to the best of my recollection. That is what led up, the technical people to come to me. I think the State money may have done it. It was an old survey. That is what led to the anticipated costs for about another $15 million.

Mr. **Andrews**. The truth is you really don't know what the final dollar figure is to clean up that site.

Ms. **Lavelle**. That is true.

Mr. **Andrews**. How many criminal prosecutions have been engaged or initiated since you have been with the Agency?

Ms. **Lavelle**. The—engaged or initiated? Let me answer that two ways. First as I remember, I think we had nine criminal prosecutions. Maybe I could refer to Mr. Perry's response to Mr. Dingell which is cited in that document but I don't have that.

Second, I think this is even more important, the 22 or 26 investigators that were hired for criminal prosecution or investigation within Mr. Perry's shop, I would say 80 to 90 percent of their workload is in hazardous wastes in terms of ongoing investigations.

Mr. **Andrews**. You mentioned twice today in your testimony that the court entered a consent decree as to the settlement.

You are not telling this subcommittee that that Federal judge in some way stamped his approval on the kind of deal the settlement from the Government standpoint, that the Government got a good deal out of the settlement; are you?

Ms. **Lavelle**. I am not a lawyer and I am hardly a judge, but as I understand the process, it is filed with the courts for 30-day review, they seek public inquiry and they review it for appropriateness in terms of public interest, et cetera, and that is the ruling that he made.

Mr. **Andrews**. The court did not comment in its decree, did it, that this case should have been prosecuted? It was settling the lawsuit, or that it should have been prosecuted?

Ms. **Lavelle**. I don't have the decree in front of me.

Mr. **Andrews**. I have nothing further.

Mr. **Levitas**. Congressman Roe.

Mr. **Roe**. No questions.

Mr. **Levitas**. Congressman Wise.

Mr. **Wise**. Thank you, Mr. Chairman.

Ms. Lavelle, going to the memos that the chairman talked about right before lunch, one dated September 17, 1982, from Mr. Kurent to Mr. Brown.

Ms. **Lavelle**. Yes.

Mr. **Wise**. I wanted to follow up; I would have problems if there were memos flying all over the place; we might as well clear some things up, though, in here. There is a reference to Dr. Arthur Palotta. He is described as your personal science adviser. Is that a correct description? And indeed, was he a private consultant working directly for you?

Ms. **Lavelle**. He was a private consultant working directly for me.

Mr. **Wise**. Is he still working for the Agency?

Ms. **Lavelle**. I am not sure, but consistent with what has been going on, he probably is not.

Mr. **Wise**. How much of his time was spent working for you?

Mr. **Levitas**. He was not full time, Mr. Wise; I am going to guess he was in 20, 30, some weeks he was in 40 hours.

Mr. **Wise**. To your knowledge did he have other clients?

Ms. **Lavelle**. I am sure he did. He had his own practice. I don't know his clients.

Mr. **Wise**. That was my next question. Did you ever talk with him about who his other clients might be?

Ms. **Lavelle**. No; other than to say that obviously he could never get in a conflict-of-interest situation and there was a form that he had to file as a consultant and my chief of staff insured that that was taken care of.

Mr. **Wise**. So you then took efforts to make sure that he did not have, or represent, any other industrial clients at the same time he was consulting to you?

Ms. **Lavelle**. Yes.

Mr. **Wise**. In here, in this memo it states that there is a fear that because Dr. Palotta is aggressive and seems to have your ear that he may get the chlorinated dioxin work groups' recommendations reversed.

What happened since this time? Was it indeed reversed or altered in any way?

Ms. **Lavelle**. No, there were three groups that were to do risk assessments in order to assist me in developing an action—a what-to-do thing there in Missouri. The three were the cancer assessment group within the Agency, the chlorinated dioxin task force within the Agency, and then a risk assessment group over at HHS.

Mr. **Wise**. Not being one skilled in the workings of EPA, and it seems like a multiheaded Agency, my question is, were there any changes or did any of what Mr. Kurent, did any of that which he feared come to pass?

Ms. LAVELLE. I want to say first, let me clarify how I saw Dr. Palotta's function and responsibilities and then we can go to the second because I have to think a second on the second one.

First, I was being asked to make decisions on whether a situation was an emergency situation or not; whether it required expeditious handling, even more expeditious than other sites that required expeditious handling, and there were a number of authorities in the law that I was responsible for making decisions.

I needed a toxicologist in my interpretation. As such I sought out, and Dr. Palotta was recommended to me by Dr. Todd Hunter, who is Assistant Administrator for the Office of Toxics within the Agency.

Mr. WISE. Were there not toxicologists available to you within the Agency?

Ms. LAVELLE. They were busy with a lot of other work.

Dr. Palotta basically acted as a catalyst going from the program office, going to the other pools of expertise as you pointed out. There are toxicologists within the Agency with expertise in certain types of chemicals or contaminants and we sought that expertise out. The case in point, chlorinated dioxin task force, a good group of experts who specialized in dioxin.

So he acted from my office as ambassador from the program office to other parts of the Agency or within HHS to seek out pools of expertise and bring them to the table to help us make these decisions.

Mr. WISE. The memo suggests he may not have been an ambassador as much as an advocate. How do you react to that?

Ms. LAVELLE. No, no, he was—that would be inconsistent with how he functioned.

Mr. WISE. To your knowledge, did he lecture the Agency's TCDD experts?

Ms. LAVELLE. There was a lot of good discussion back and forth on research done. I don't think he lectured. That is rather obvious.

Mr. WISE. That was the language in the memo.

Could we go back to the initial question which was, did any—did any of what Mr. Kurent was writing about, his concerns, did any of that come to pass?

Ms. LAVELLE. No, what he was saying was would we clean up—I can only surmise; this thing is so poorly written—would we change the standard for cleanup in soil from one part per billion to perhaps something higher.

The one decision we made or that I made, was the Meeker-Staat residents in Missouri, and the answer was no. It was consistent with the one part per billion. I can't speak for the decision recently made in Missouri which affected 300 parts per billion. That was made after I left.

Mr. WISE. During the time you were there, did the decisionmaking process that he writes about, the decisions apparently were made by two special interprogram offices, the chlorinated dioxin work group and the task force, did that make the process change?

I am referring to the third paragraph on the front page of the memo.

Ms. LAVELLE. There was a lot of intellectual arguing back and forth but the way to answer it I guess is when the group met, I say "group," I had lawyers in there and scientists in there, a lot of factors you have to consider when you make a decision, of course.

Mr. WISE. With lawyers and scientists in the same room, I pity you.

Ms. LAVELLE. These meetings were interesting.

But the scientists came in; they presented their risk assessments; they being these two particular groups within EPA as well as later in HHS, the risk assessment. All three arrived independently at one part per billion. That was the action limit I set.

Mr. WISE. In conclusion then, that which Mr. Kurent was writing about was groundless, is that correct?

Ms. LAVELLE. Totally.

Mr. WISE. Thank you.

Ms. LAVELLE. Thank you.

Mr. LEVITAS. Thank you, Mr. Wise.

Before I recognize the gentleman from New Jersey, Mr. Roe, Ms. Lavelle, are any of these names familiar to you? Lee Thomas?

Ms. LAVELLE. Yes.

Mr. LEVITAS. Lee Verstandig?

Ms. LAVELLE. Can't say I know him.

Mr. LEVITAS. Al Zeuck?

Ms. LAVELLE. Zuk?

Mr. LEVITAS. Zeuck.

Ms. LAVELLE. No.

Mr. LEVITAS. Charles Dempsey?

Ms. LAVELLE. No.

Mr. LEVITAS. Courtney Riordan?

Ms. LAVELLE. Yes.

Mr. LEVITAS. I am advised that Mr. Thomas has just been appointed Acting Assistant Administrator for Solid Waste and Emergency Response.

Mr. Verstandig, who was formerly at the Department of Transportation, in a similar capacity, as Acting Assistant Administrator for Legislation.

Mr. Al Zeuck, Acting Assistant Administrator for Administration.

Mr. Dempsey, Acting Inspector General.

And, Mr. Riordan, Assistant Administrator for Research.

But you are not—except for Mr. Riordan—I take it, and Mr. Thomas, you are not familiar with any of these people?

Ms. LAVELLE. No.

Thank you.

Mr. LEVITAS. The gentleman from New Jersey.

Mr. ROE. Thank you, Mr. Chairman. I just wanted to get a couple of points across.

In your earlier testimony you spoke to the issue of the work being done to clean up and so forth. I am curious, what was the recognized policy or was there a policy relating to the contamination of ground water?

I think you spoke to that somewhat earlier in your presentation. We are doing surface cleanups and that sort of bit, but, as you indicate, as I recall—correct me if I am wrong—you manifested considerable concern, however, in the ongoing relationship to the ground aquifers.

Ms. **Lavelle**. Yes.

Mr. **Roe**. What kind of attention, in your judgment, is the Agency giving that issue? I recognize this is somewhat of a technical question because, when we speak of contamination of ground aquifers that is pretty permanent.

Is there any relationship extant there?

Ms. **Lavelle**. The one I had control over was the RCRA implications and all of our regulations that we finally promulgated were written protective of ground water.

In other words, zero contamination of ground water was the ultimate goal.

Mr. **Roe**. I am trying to lead to a point. That would be after the fact.

In other words, any new regulations we would be promulgating——

Ms. **Lavelle**. You are correct.

Mr. **Roe**. When we expect to clean up and put a price against that cleanup, somebody has to determine what that should be.

How did they evaluate the impact on the aquifer or did they write the aquifer off?

I realize it is a technical question.

Ms. **Lavelle**. But Mr. Roe, it goes to the heart of the technical problem now in implementing this whole program.

Mr. **Roe**. Exactly.

Ms. **Lavelle**. Atlantic City, a major aquifer, I think Atlantic City is drawing up something like 19,000 gallons of water a day from this aquifer that is contaminated with 120 contaminants.

Mr. **Roe**. More like 19 million, would you suggest?

Ms. **Lavelle**. 19 million, yes, oh, yes.

Mr. **Roe**. That is the one that goes to the Bridgewater case.

Ms. **Lavelle**. Yes, it does. The problem was engineering-wise there are no simple solutions right now. Maybe we are going to be writing some aquifers off and engineering may advance to the state of the art, but we were pushing the state of the art. It was hard enough to remove organics for which we have some technological cleanup, but when you get to the heavy metals and synergistics of organics and inorganics, it is mind boggling.

We did not have the answers yet.

Mr. **Roe**. I realize that, but what I am trying to get in the record is when we determined what the cost should be, the cost should be related to the damage done in the Superfund Program. Take the Atlantic City situation for example. Assume we have 120 contaminants, some more lethal than others, and what-have-you? Once those contaminants get into that water supply, particularly in ground water supply, it could be destroyed if you like for the next 1,000 years. That is a reasonable statement to make.

When EPA was settling on what the damages were and where there was an identifiable polluter, was that taken into consideration?

Ms. **Lavelle**. Yes, sir.

Mr. **Roe**. How would we ever clean that up in the first place?

Ms. **Lavelle**. Well, obviously, Mr. Roe, it is extremely hard to come up with—it is almost impossible.

Mr. **Roe**. Impossible?

Ms. **Lavelle**. But in the negotiation process we had a component called the natural resources damage component which was equated into other factors to come up with our total package and estimate.

That is consistent with the Superfund law, and Department of Interior. We were working with them trying to come up with some factor. We cited some factors in our settlements. We, frankly, were learning as we went.

Mr. **Roe**. I don't want to get off too far on a tangent because I realize it is highly technical in nature. What I am getting at is in the Superfund, when they were establishing what the damages were, there had to be a price placed on that to remove where possible those particular contaminants.

When we get to the water supply of an entire city, do we put a price on that? Do we come back and say to the person or the group or whomever had contaminated that water supply, that you have to replace the water supply for the people of that area?

Who is responsible after they have destroyed the water supply for the people? Who is responsible to replace it? Did we set any policy on that yet?

See what I am getting at?

Ms. **Lavelle**. I do. Those were all factors that we brought in as we negotiated or as we filed.

Mr. **Roe**. Let me put it a different way.

Ms. **Lavelle**. Is there a clearcut policy—no.

Mr. **Roe**. That is what I am trying to get at. Here is a water supply for the city of Atlantic City with 120 contaminants, to the degree we determine who put them in there and say they have to be removed, of course. Now we are talking about more or less ground contaminants, surface contaminants, things of that nature.

Did the Agency establish any policy saying the following: "We can remove that which is leaching into the ground water. We can take care of that and do something with it." That is another problem.

Ms. **Lavelle**. Yes.

Mr. **Roe**. Was there any consideration given to not only what is in the ground but that which is already in the aquifer that has poisoned the aquifer—and I don't think that is too strong a word. We will let that drift, or do they have a responsibility in your judgment to replace or do something to replace that water supply?

Is that part of the solution?

Ms. **Lavelle**. The way the policy was, I guess simply stated we pursued clean-up of the aquifer to a level that it was prior to the contamination.

Mr. **Roe**. That is an awfully broad statement to make.

Do you want to make that statement? I don't want to lead you down the wrong path. Assume we have cyanide involved. We can remove part of it, but we can't get it out of the aquifer because it is a 1,000 feet below the surface.

All I am asking is, was there ever any policy that evolved in EPA where they would come back and say to the polluter, now you have $120 million worth of damage here, but if you paid $500 million it wouldn't make any difference because we can't get that material out of the water supply now. It is there forever.

Or, at least as far as the state of the art is concerned, we would have to pump the whole aquifer out, which is illogical technically.

Was there ever any added costs to come back to the polluter and say, you have destroyed the water supply for that area, period. You can take all the temporary material out and everything you have done and that will cost $18 million, but it is going to cost $40 million to replace that water supply for that area.

Did we consider that as to be part of their responsibility?

Ms. **Lavelle**. Well, Mr. Roe, returning to Atlantic City, yes, the cost was to provide an alternative drinking water supply.

Mr. **Roe**. OK.

Ms. **Lavelle**. Until such time as, God willing, we may come up with a way to clean it up.

Mr. **Roe**. Was that part of the settlement, for example, in the Atlantic City case?

Ms. **Lavelle**. That was prior——

Mr. **Roe**. Maybe we can provide that.

Ms. **Lavelle**. I don't think we have it. It is an excellent street to pursue, but that one we didn't have the responsible parties that we could go to.

Mr. **Roe**. All I am trying to establish is that it is one thing to remove the material that may be identifiable on the surface of the ground and so forth and so on. I am trying to get at the point of, did EPA look into the longer term damage vis-a-vis the ground water supply?

And then, third, did they consider that to be part of the—nationally—to be part of the national criteria where people are not saying we will remove the surface pollutants, but they are not held for treating the aquifer. Is there any consideration given to the clean-up of the aquifer?

Ms. **Lavelle**. We do have that in our considerations, we call it the natural resource damage assessment.

Mr. **Roe**. So that is considered. Let me ask one other question and I will stop.

I would assume you would have to bring in—maybe I am wrong—you have certain numbers of people that would be technically trained in-house to be able to advise the administrators of the program on what their observations were. When you look at the enormous range of combinations of pollutants which create different problems than just a single type of material, did you have to bring in consultants? Were you allowed to bring in consultants from universities and different areas where you had enormously complex material where you could get the added expertise?

Ms. **Lavelle**. Yes, sir, we were allowed to hire consultants, and indeed we did and we do.

I think Mr. Levitas had asked me in what way would I change things over there to help out. And I—you are hitting on one area that really needs help.

I think there should be more encouragement of universities, and even of industry that has expertise in these areas, to help us set these risk assessments, to come up with the cleanup necessary and the technological solutions we just don't have in this country right now.

Mr. **Roe**. Let me conclude on this note. Are we pursuing that to the optimum, or is that still in the developing stage?

Ms. **Lavelle**. I think——

Mr. **Roe**. I could ask you how many consultants we have, but in the older magnitude of the problem are we really out there trying to get this solved in a hurry because of its damage. And are we taking advantage of the optimum technological knowledge that we have?

Ms. **Lavelle**. Two direct steps come to mind immediately to optimize it. One is 86 percent of our money is extramural in the private sector, so we were trying to get those entrepreneurs, those new engineering solutions at the sites. And the way to do that is to encourage the private sector and have them compete and come up with solutions. We were seeing a lot of, even in 4 or 5 months, we would see changes in ways to handle things.

Under the RCRA program we were coming up with new chemical treat, physical treat, from the private sector coming to us for permits so we could use it in the cleanup efforts at these sites. So our R&D efforts were being focused in that direction as were regulatory efforts. And most importantly, our contractual efforts in terms of involving the private sector.

Mr. **Levitas**. Would the gentleman yield on that point? Because the question you raise is extremely important.

Mr. **Roe**. Yes, I yield to the gentleman.

Mr. **Levitas**. You have indicated that you were having difficulty obtaining risk assessments.

Ms. **Lavelle**. Yes.

Mr. **Levitas**. As I recall, you said to me the other day that when you were pursuing the problem of obtaining risk assessments with Ms. Gorsuch—or Mrs. Burford—or Dr. Hernandez, the Deputy, that their response was less than an enthusiastic high priority response.

Ms. **Lavelle**. Let me just try and clarify what I meant.

Dr. Hernandez was in charge of the scientific integrity of the Agency, and still is.

Dr. Reardon, Dr. Todhunter and myself had all approached him to come up with the consistent approach in risk assessments that we needed help in. I think it was moving along, but it wasn't moving along as fast as I guess I needed it, because I was on the firing line of the program having to make daily decisions. I would like to have seen it sped up a lot more.

Mr. **Levitas**. I think that is a good point.

Mr. **Roe**. I will close on this point, because it is a fascinating area I would like to pursue, but we don't have all the time in the world. Just the other day we had a hearing on the new promulgation by the Agency of water quality standards. The Subcommittee on Water Resources, a subcommittee I chair, considered that but we didn't finish it, but we got enough started. The concern we were faced with, and which this committee is faced with is that by reducing the present regulation requirements we are opening up the existing situation for rivers and streams to be able to absorb more pollutant materials. This committee, of course, would rebuff that because obviously, what we would be doing, in the judgment of this member and of his subcommittee, would be simply saying that instead of keeping the tight requirements they already have on water quality standards we would be reducing those requirements. That is what the argument with the EPA is at this point, which is not in your particular field.

But it seems to me—let me just try to put this in one other way. It seems to me that if somebody has been responsible, which we identify for, again, poisoning our water supply—because that is the key issue—then it seems to me that they ought to not only be responsible from the point of view of cleaning up the pollutant, but if it is irretrievable to the art of the technology that we have today, then they ought to be responsible in whole or in part to replace part of that water supply.

Is that an unreasonable point for a committee to consider at this juncture?

Ms. LAVELLE. No, and that is the direction we were asserting.

Mr. ROE. But not in the sense of law as yet?

Ms. LAVELLE. I can't speak for the water——

Mr. ROE. No. I am just wondering shouldn't we be mandating that if somebody has poisoned the water supply it is not good enough to just clean up the dirt around it. You also have to replace the water, too. Is that an unreasonable approach to follow?

Ms. LAVELLE. No. I think that is the approach we had taken in Superfund.

Mr. ROE. Thank you, Mr. Chairman.

Mr. LEVITAS. Thank you.

Let me ask you, when you were originally interviewed for the job, you mentioned earlier that you were interviewed extensively by Mr. Sanderson.

Ms. LAVELLE. That is correct.

Mr. LEVITAS. You indicated to me the other day, a couple weeks ago just preceding your termination, that Mr. Sanderson was noticeable around the Agency. Is that correct?

Ms. LAVELLE. That is correct.

Mr. LEVITAS. Did you speak to Mr. Sanderson during that period of time earlier this month?

Ms. LAVELLE. Only socially at a—at two fundraisers for the Republican Party.

Mr. LEVITAS. Between the time you were hired and the time you were terminated, did you ever have any discussions with Mr. Sanderson other than of a social nature?

Ms. LAVELLE. I am trying to think. The only instance that might have occurred was in the first month or two after I was confirmed when Mr. Sanderson was still being considered for nomination, and I am not sure of that time cross-over but as soon as he chose to withdraw from the nomination process I really haven't had any conversation other than social.

Mr. LEVITAS. Did Mr. Sanderson ever discuss with you any matters relating to the Agency or policy in his capacity as a consultant to private industry?

Ms. LAVELLE. Not with me.

Mr. LEVITAS. You mentioned several times today that there is always a question in deciding whether to litigate or to seek treble damages and that there was always some uncertainty whether you would be successful. That the evidence was not strong enough or other factors. It seems to me that you have been suggesting that the legal cases in some cases were too weak, that the attorneys in Mr. Perry's office couldn't put a solid case together. Is that a major problem?

Ms. **LAVELLE**. It was a problem to consider, which I did when I had a number of cases. But I think that that was more appropriately his judgment to make. I was just commenting on some observations that I had.

Mr. **ROE**. Would the gentleman yield?

Mr. **LEVITAS**. Be happy to yield.

Mr. **ROE**. I think that we say there is a judgment to be made. But it seems to me that when the Agency went into the direction of negotiating a solution to a problem there is monumental room because of the complexity of the technology involved. We agree even the state of the art hasn't arrived in many instances at that point, that the judgment was made on the part. In this instance I think you said Mr. Perry was chief counsel. Somebody had to make a judgment someplace.

Ms. **LAVELLE**. Yes.

Mr. **ROE**. But when that judgment was made it was negotiated, a negotiated agreement and it negated and wiped out the responsibility of treble damages if there was an error in judgment made in the technical decision, digression from that.

Ms. **LAVELLE**. True.

Mr. **ROE**. We have had case after case in the Clean Water Act where new technology was applied and the new technology was a total bomb—it didn't work. Millions of dollars were spent on it, and they had to go back and do it all over again.

The question I am coming to, do we hold any control in a settled case where they would be obligated for additional costs involved, or by negotiating did they absolve themselves of the treble damage provision under the law?

Ms. **LAVELLE**. I see.

Mr. **ROE**. Do you see what I am trying to get at?

Ms. **LAVELLE**. I do. We had to know a cost estimate in order to negotiate, so I guess the first premise would be that there was a way to clean this up. There was a way to cite the environmental damage in order to give them a total clean up.

So I am thinking——

Mr. **ROE**. Let me see if I can clarify, if the gentleman will yield further.

There is a case in my State where there has been a long, 25-year history—which is just coming out now—of the processing of material that has resulted in an overconcentration of thorium. OK?

Ms. **LAVELLE**. Yes.

Mr. **ROE**. The debate is going on and it shouldn't be debated at all. We have had the NRC and all the experts in this and yes, there is a tremendously higher level of thorium radiation than permitted under the governmental requirements. While the debate is going on as to who is responsible to remove that, the material has been placed in some kind of containers near the surface of the ground and it is on the side of a hill.

As the water comes down, the natural aquifer runs down the side of the hill and it goes right through this like they were flushing it out into a brook that goes directly into the water supply. It exists.

It is there. No question about who—I am not even saying who is responsible. It is there now.

I am saying, when we come back to the area we are talking about here, somebody is responsible. Now they can't make up their mind what is the technological solution because there is no rule or regulation now, no process in the U.S. Government that says you have got to remove that material because where are you going to put it?

Ms. **Lavelle**. That is true. That has happened to us.

Mr. **Roe**. That is a FUSRAP law and it has to do with low-level radioactive material and where you place it.

If we negotiate with those people and say we build a fence and put concrete around it to hold it for the moment, have we given up our treble damage situation? They are responsible for it. In other words, are we giving up a very important element under the waste bill, toxic waste bill, by negotiating, or are we holding them responsible if the solution doesn't work?

I think that is what the gentleman from Georgia is asking.

Ms. **Lavelle**. With your last comment you hit it on the head. We are holding them responsible for a cleanup, OK, Seymour, it is a surface cleanup.

How they get it, what engineering standards—excuse me, what engineering they employ they have to discuss with the environmentally protective type, consistent with RCRA, and they are responsible for the cleanup. Perhaps that is the distinction to be made here. When we negotiate they are responsible for work. So it means it has to be probable, has to be actual, and then it will be done.

Mr. **Roe**. If the gentleman will yield further, has every single cleanup project that your Agency agreed to, has it resulted in cleaning up the material?

Has every technical solution been applied and has it been applied correctly?

Ms. **Lavelle**. Of the 39 settlements as defined thus far, yes. In other words, we only gave away—how can I state this clearly—you are defined under the law or under our settlements to do *x* amount of work consistent with all these ground rules that we give you.

You have to do that, or we can go in and enforce against you. So we have not waived anything.

You are responsible for that work whether or not it be a surface cleanup. We had a segmented approach; you are responsible for the study; then we consider the surface. Once we know the ticket on the ground water aquifer, then we start discussing that or we will sue on the ground water aquifer.

That was another approach we used, a segmented approach.

Mr. **Roe**. Then, isn't this committee proper in its request for the basic information if there is nothing to hide, then it shouldn't be denied this committee, the right to review that information, should it?

Would you agree to that?

Ms. **Lavelle**. Well, I agreed with Mr. Levitas on September 29 on that.

Mr. **Levitas**. That leads me directly to the next point.

You agreed with me that one of the considerations that was made by you, taken into account by you in negotiating, was the apparent weakness in the litigation preparation of these cases.

Do you know or do you suspect that that may be one of the reasons these documents were considered enforcement sensitive; that the office of legal counsel didn't want to see, let us see how weak their cases were?

Ms. LAVELLE. I can only react with the discussion I heard at my end which was more a concern over the public or the responsible parties having access to the files. So, I don't think it was ever that Congress——

Mr. LEVITAS. As to the weakness of the case?

Ms. LAVELLE. Yes.

Mr. LEVITAS. And the cases, if they were released to us, who would see those weaknesses

Ms. LAVELLE. Theoretically the public and the responsible parties would know the Government had a weak case in that particular instance.

Mr. LEVITAS. There have been no criminal prosecutions under Superfund with respect to hazardous waste dumps, is that correct?

Ms. LAVELLE. I think they are all RCRA criminal.

Mr. LEVITAS. There is a spill case I am familiar with.

Ms. LAVELLE. There is A-9, where they were totally Federal and they were all RCRA.

Mr. LEVITAS. But not a single criminal prosecution of someone who had been responsible for one of these hazardous waste dumps?

Ms. LAVELLE. It wasn't that we were trying to avoid criminal prosecution; in fact, the criminal prosecution was coming out of the Hazardous Waste Program in which we use the RCRA authorities.

Mr. LEVITAS. Does the Agency do anything with the Corps of Engineers with respect to the cleanup program?

Ms. LAVELLE. Yes, sir.

Mr. LEVITAS. What do you do?

Ms. LAVELLE. Because we had so many sites and we wanted a Government presence at these sites, whether we are directing cleanup or the State is directing cleanup or responsible parties are doing the cleanup, the Corps of Engineers—we have worked out an agreement whereby they will expand the Federal presence at these sites and act as our on-site management contractors. Mostly we are employing their services at the Federal lead projects, Lehigh, PA, for example, a case in point.

Mr. LEVITAS. Did you have a good experience working with the corps?

Ms. LAVELLE. Thus far, yes.

Mr. LEVITAS. Was Rohr Industries identified as a responsible party in any of the 160 sites?

Ms. LAVELLE. I am sure they were, but I sure——

Mr. LEVITAS. You don't know of any from your own recollection?

Ms. LAVELLE. No.

Mr. LEVITAS. Let me go to——

Ms. LAVELLE. Were they in Seymour? No, Stringfellow, I think.

Mr. LEVITAS. Let me go to Seymour because it illustrates the point that we have been getting at, Mr. Roe, Mr. Andrews, and myself.

Of the responsible parties, 24 entered into a settlement under which they paid approximately $7.7 million as the settlement. What did they get in return for paying that $7.7 million?

Ms. Lavelle. I think——

Mr. Levitas. I mean big companies—you know who they are.

Ms. Lavelle. First of all, they paid $7.7 million and bonded up to $15 million. The reason was, we wanted them to be responsible for the surface cleanup. They thought they could do it cheaper with a particular contract. I didn't have faith in that and we wanted to have the cleanup.

In return——

Mr. Levitas. Let me make sure I understand. You estimated the cost to be——

Ms. Lavelle. To be $15 million.

Mr. Levitas. To be $15 million, and they said they will pay $7.7 million?

Ms. Lavelle. Correct.

Mr. Levitas. OK.

Ms. Lavelle. I said that is very nice, but we still show it is going to be $15 million. We want bonding, and so forth, other financial things, so that you are responsible for this work and we stipulated what this work should be, and simply put, it was cleanup of the surface consistent with all of our RCRA provisions and safety provisions and so forth.

In return, those 24 companies did get protection from further prosecution at that site.

Mr. Levitas. In other words, for a maximum of $15 million, $7.7 paid in, and performance under the bond, they got out of $15 million.

Ms. Lavelle. Yes.

Mr. Levitas. What was the total estimated cost of cleanup at the site?

Ms. Lavelle. $30 million.

Mr. Levitas. Now, that means these 24 companies are, for a maximum of $15 million, released of any liability. What about the aquifer?

Ms. Lavelle. The aquifer——

Mr. Levitas. That doesn't touch the aquifer, does it?

Ms. Lavelle. No, that is the surface cleanup. The costs were $30 million. Surface estimated to be $15 million. We just went through that discussion of how we got there.

Mr. Levitas. Right.

Ms. Lavelle. The volume of the generators was what we thought to be equivalent to 50 percent of the volume. We were using the volume as the rule of thumb. We made no sort of discussion whatever if your volume was not hazardous or whatever; it was volume in, volume responsible.

My numbers are wrong because I don't have notes—say 250 responsible parties still for the aquifer. We, based on the $30 million total cost, knew what their individual responsibilities were consistent with the volume in concept.

For want of a better word, we said to them, here is your responsibility. Pay in or we are going to file and go litigate.

Mr. **Levitas**. Was every responsible party offered the opportunity to participate in the settlement?

Ms. **Lavelle**. In the surface cleanup settlement? They were all notified that they were responsible parties. A group formed on its own and came to the Agency and I guess that is understood—there are several joint provisions and——

Mr. **Roe**. Would the gentleman yield?

Mr. **Levitas**. Let me finish the point on this because it ties in and it will feed into your question.

Go ahead.

Ms. **Lavelle**. Now, we have the aquifer; we have the $15 million liability, and again I am probably wrong, but there were basically 112 paid up for the $30 million calculated participation responsibility.

That was about $3.5 million more than what we got. As I left, we were discussing how we would pursue the remaining responsible parties.

For the record, and I don't want to list any names because I don't remember the names, but there were some big companies there still responsible.

Those that paid in for the $30 million were not given, as I remember it, were not given any sort of protection from—what do I want to say—further financial prosecution for any increase in costs in the aquifer cleanup.

Mr. **Levitas**. Well, the reason I think that this is one—and you disagree with me—but I think this is one of the real sweetheart deals is, the major contaminators bought out and got themselves relieved of responsibility in my judgment for a fraction of what it will cost to clean up that site and while there may be one or two big corporations left, my guess is that the taxpayers are going to end up eating most of the costs on this thing, leaving aside the aquifer which I don't think anybody even has the remotest idea what it will cost to clean that up.

That is an example of the type of transaction that I have been concerned about.

Mr. Roe.

Mr. **Roe**. I think the gentleman, and so is the lady getting to the key point.

As I understand that case—I don't have all the facts either because we don't have all the records—as I understand that case, there were 171 companies involved. Purportedly, when they made the settlement, of the $7.5 million, or whatever it was, with $15 million in bonding and it cost $30 million to clean it up, that did not address the factor as it related to what would happen to the ground water.

We knew it was contaminated.

Then I understand from that point of view that when the 171 companies or thereabouts settled for the $3.5 million that they had then no more liability.

Now, if that contention is correct, then, as I understand the case, they cleaned up the surface end of it, but they were off the hook as far as the ground water was concerned.

As to the permanent damage to the ground water, as the gentleman from Georgia pointed out, no one was able to identify—at least from our knowledge and again the lack of records—precisely what the impact was on the ground water and could it be cleaned up?

Ms. LAVELLE. I guess two comments. My technical people came to me with an estimate for the groundwater cleanup and that it could be done for they thought to be $15 million.

The potential defendants that are left most certainly can go about cleaning up the ground water and if they do it for $3 million instead of $30 million, but do it successfully, then the cleanup is completed and we have all achieved the objective we want. So I guess my comments would be, (a) I would estimate in hand from technical people, they looked to be very sound estimates, we fought that back and forth with the State as well.

And, (b) we have left every option there to pursue the full costs so as not to have to spend any of the taxpayers' money there to clean up.

But you are right, Mr. Roe, it is not black and white. It is a bunch of decisions that you have to make as you go along. I think there was good decisions and I can see how you can construe——

Mr. ROE. If you yield further, I am not faulting you as the Administrator for that decision.

Ms. LAVELLE. I understand.

Mr. ROE. But I am coming back and saying as is being built here, that from a policy point of view that the optimum goal is to do two things, one, to clean up the pollutants that are continually contributing toward continuation of pollution of the ground water. Take into consideration that probably 75 or 80 percent of the water supply of the United States is ground water. Now we are coming back and saying, well, you are going by a certain amount of technical information given you as Administrator. I am coming back and saying the following—where the settlements made by relieving the people involved from further liability such that the ground water was cleaned up before the following reason, and if the gentleman yields further, I understand one solution went to the point of drilling additional wells for people so supposedly new wells in new areas hopefully would not be polluted. Therefore that was part of the settlement as I understand the case.

I don't have all the facts either. We don't have all the information.

Ms. LAVELLE. Yes.

Mr. ROE. But the fact remains once that water—once that pollutant gets into the ground water, that as you well know is a variable that can go for miles and pop up someplace else.

Ms. LAVELLE. Yes.

Mr. ROE. All I am simply saying is are we on the right track in a policy framework of coming back and saying if their solution is to drill a few more wells that don't clear up the pollutants in the aquifer per se, do you follow what I am getting at?

Ms. LAVELLE. Yes, that is true. I wish I had my notes but as I remember Seymour it was a case of chlorinated solvents, it was a "plume indicator" is the word we always used and you are more aware of that than I.

Mr. ROE. Perhaps that will come out in this particular case when we see the records.

Ms. **Lavelle**. Yes.

Mr. **Levitas**. Yes, and I might say to my colleagues that I am advised by staff that we will receive documents, intend to receive documents under the memorandum of understanding tomorrow. Under executive session rules. I believe Seymour is one of the sites that will be covered by that divestiture.

Let me move to a sensitive area, Ms. Lavelle. This is one that has to be covered because there have been obvious repeated allegations concerning it. I am talking about the extent to which political considerations play a role in the activities of this program. You have stated before the Senate committee and before us today in general terms that you have never taken political considerations into account. Is that correct?

Ms. **Lavelle**. That is correct.

Mr. **Levitas**. I want to be more specific now and some of this may be viewed by you or others as simply being nothing new in running agencies in Washington or whatever but were there decisions which were made or actions taken or resources committed in the period immediatley prior or shortly prior to the elections of last year that were related to attempting either to assist or not assist candidates running for public office?

Ms. **Lavelle**. There were a number of decisions made and the driver was a September 30 budget cutoff. I wanted to spend as much of the 1982 appropriation and get it out to sites as we could. So I would say that that was the primary driver. Then there is a number of other key decision points that came in. Does the State have their 10 percent? Do we have enough of a study here to put a cost on it? Do we have data enough to initiate a study?

There were a number of factors. But, yes, it looks—if one did not understand the way we were moving it would look that there were a lot of decisions made in September, October, November.

Mr. **Levitas**. That is what it appears to me, that during a period of time in September and October which my calendar tells me is shortly before November——

Ms. **Lavelle**. Yes.

Mr. **Levitas**. There were a lots of decisions being made, lots of activity.

Ms. **Lavelle**. Yes, sir.

Mr. **Levitas**. Let me give you an example of one other aspect of that.

Did you during that period of time dispatch high level career employees in your office to participate or work with States or officials during that period, say, on short notice would you send Mr. Lucero and Mr. Hedeman, saying OK, you need to go out to, for example, Ohio and do such and such with respect to a Superfund matter, announcement of a site?

Let's take Ohio.

Ms. **Lavelle**. That is a good case in point because we made a lot of announcements in Ohio. Who did we make them with, Governor Rhodes and he was lameduck. He chose not to run again.

I would say that in Ohio the Superfund Program is really moving out. Ohio was, I cannot remember, five or six in terms of number of sites in the State. So I think it was—I can say that it was more selling the program in Ohio.

Mr. LEVITAS. Let me pursue that just a little bit further. It is my understanding that Ohio had been moving along pretty well for a period of time. Did one or two of your high level career employees get dispatched on short notice to Ohio to travel around the State with the Governor, Governor Rhodes, who was well identified as sort of leading the very popular person with his polital framework to go around the States and make announcements and make decisions and indeed travel on the Governor's plane and things of that sort?

Ms. LAVELLE. I don't know that I dispatched any people to do that in Ohio. I would really have to think. Maybe if you give me some more specifics I could help you. But Ohio was one of our shining light States in terms of we were pushing money. But it isn't just, hey, let's go announce money from Ohio next week. These were a culmination of a good 6 or 7 months of work when we finally had all the documents in tow and all the appropriate items were there for a decision to be made as to how much money should be given and that the State had come in and said yes, we can afford that 10 percent and we are all happy.

So maybe if you would be more specific.

Mr. LEVITAS. What I am suggesting is—maybe it was somebody else in the Agency other than you——

Ms. LAVELLE. I was on Governor Rhodes' plane.

Mr. LEVITAS. During that immediate period?

Ms. LAVELLE. I don't know that it was then but I think it was after. It was the Skilgen home, which is a perfect example. These people—it is unbelievable what you get into in this program—these people were digging up their barbecue pit in the back yard and found thousands of vials of radioactive material. This is a residential area in south Ohio. I went up there to make the announcement because it was a very important issue in Ohio, I made it in the Governor's office and the Governor very nicely said would you care to go meet with the Skilgens, and I did.

Mr. LEVITAS. I am not suggesting it makes any difference, but in fact you were a presidential political appointee and that may cast another light on it.

My question is——

Ms. LAVELLE. Maybe after the election it was.

Mr. LEVITAS. But maybe it makes a difference if on very short notice, sort of rush up in early October, you take two high level career employees and say, we got you to come in this morning and get out to Ohio because we want to make an announcement on this today and we want you to get out there and you will meet with Governor Rhodes and you will fly to a couple places and make some announcements.

Ms. LAVELLE. Are you saying this occurred in October?

Mr. LEVITAS. Now if this was planned and phased in over a period of time, and we are all anxious to have good news, maybe come in tomorrow morning with your bags packed or maybe next week if you are not doing anything—but if it is the case and I am not suggesting it is, but why if it is the case would somebody be told on short notice, drop everything you are doing and get out to Ohio and make these announcements?

Ms. **Lavelle**. I am not trying to avoid your question. What I am trying to say is that usually we had planned when we would make these announcements. Perhaps I was sick or something, if you can help me, I made most of the announcements. Sometimes because, thank goodness, we finally had this program moving fast enough, sometimes Mr. Lucero, and Mr. Hedeman, or Mr. Skinner would go make announcements while I also was making announcements.

Mr. **Levitas**. But you don't have any recollection at this time of asking Mr. Lucero and Mr. Hedeman on very short notice to go to Ohio and make some announcements with respect to the Superfund program?

Ms. **Lavelle**. I may have asked them to make the announcements in lieu of me.

Mr. **Levitas**. Well, we are going to be talking to Mr. Hedeman and Mr. Lucero very shortly.

In connection with that, did anybody else in the Agency higher up or outside the Agency ever discuss with you or suggest to you that during this period of September–October of last year that it would be a good idea or helpful to make some of these announcements at the right places?

Ms. **Lavelle**. Well, let me——

Mr. **Levitas**. Let me say this in advance of your answer because I am not trying to set you up. If somebody didn't say that to you I would be very surprised. I would be very surprised.

Ms. **Lavelle**. We were selling the program and if you look at our travel schedules as well as those of the regional administrators, a lot of times regional administrators or even division directors would go make these announcements, we were in the sales mode on accomplishments of the Superfund because we were under fire, and we are still—are we doing the job we should do. So a lot of us were on the road. I was encouraging my people in the regions as well as here in the office to go out and make a series of announcements.

Were they political motivated? There were politicians there but I am not trying to say that that is what drove it. Any place there was a major announcement we tried to have a person there to make that announcement.

Mr. **Levitas**. I am not suggesting that you or this administration or the Republican Party has a monopoly on making politically motivated decisions.

I——

Ms. **Lavelle**. Sir, that did not enter into what site would be available to announce when. That decision was months ago in terms of——

Mr. **Levitas**. But the when may have been critical. If it was—go to Ohio—things are close there, let's go out and make those announcements. Or put another way, as you just stated, the Agency and the program was under fire, environmental issues were important issues in the election, let's go out there and make the case we are doing a good job, and let that message get out, and let's get it out not in December or near Thanksgiving, let's get it out before November 2.

Ms. **Lavelle**. We were also out there in December, Thanksgiving, January, and as I left I was still making announcements.

Mr. **Levitas**. According to your records there wasn't any unusual activity prior to that time?

Ms. **Lavelle**. There was a lot of activity, we had a September 30 budget cutoff. I think the elections heightened the interest in maybe helping some of the States decide, because this was a joint effort in announcing. It may have helped us, the 10 percent. You look at me like I am trying to avoid it, but yes, there was a lot of activity, and there was a lot of activity after the election and there continues to be a lot of activity in terms of the announcements.

Mr. **Levitas**. Did anyone outside the EPA ever discuss or suggest to you that it would be helpful to get some good P.R. out of what you are doing well in the Superfund Program prior to the election?

Ms. **Lavelle**. Prior to the election and after the election.

Mr. **Levitas**. Prior to the election.

Ms. **Lavelle**. And after the election. It's always been the suggestion that this is one of the high-performing programs of this administration and why not talk about our accomplishments?

Mr. **Levitas**. OK. One last point I want to get on the record, and it has to do with an attitude that may or may not have prevailed, a feeling about what was going on in Superfund at a particular time during this period in late summer—early fall and December of this year.

Now, incidentally, going back to my last line of questions, I had intended to pursue a line of questions on those political considerations with respect to the Stringfellow acid pit sites and meetings that may have occurred with Governor Brown's staff at that period of time. But in deference to Chairman Dingell's focus on that I will defer to him.

But we received a tape the other day from the—it came from the EPA. It was delivered to me by an assistant attorney general. It was turned over on the basis that they found the tape and wanted to let us have it. It relates to discussions on the Superfund, under the Superfund Program specifically with respect to the Stringfellow acid pit site. I am making a copy of this available to Chairman Dingell as well.

We are—I have heard the tape—we are still in the process of trying to identify all of the names to be tied into the voices, and essentially I think it is fair to say that there is nothing sinister that I can—that I am aware of, but it may flesh out a pattern. I will say further there is some significant information on there concerning some of the weaknesses and problems in the program and the way it was being administered that will be extremely helpful to us and to other committees as it ties into other things.

Most of this discussion on the tape deals with technical matters, scientific information, and evaluation of some consultant's work which was considered to be inadequate and insufficient.

Then the conversation goes on to the discussion relating to the bringing together of some files and documents in connection with this. The conversation I am told takes place in San Francisco between some group out of EPA from Denver, a special hazardous wastesite strike force of some sort, and regional officers of region 9. The part I will let you hear is where they pass from the discussion of some of the science and inadequacy of the consultant's work and who will pay for it and who will object to it and so forth, to a discussion of getting some files together which may not be subject to discovery.

I would like to ask Mr. Prolman if he would play that tape. I think you better put it in front of the microphone so members of the committee can hear as well.

[Tape is played twice.]

Mr. **Levitas**. Were you able to hear that, Ms. Lavelle?

Ms. **Lavelle**. Yes, sir.

Mr. **Levitas**. First of all, can you identify any voices in there?

Ms. **Lavelle**. Yes.

Mr. **Levitas**. You do?

Ms. **Lavelle**. Yes.

Mr. **Levitas**. The pertinent part—and there were other things in there—but the pertinent part that struck me was when they were talking about getting all these files together, and this person says: "When we get them together, we ought to burn them."

And he says: "Yes, you mean like Watergate." And there is some laughter.

Then the person says: "Like Stringfellowgate."

Then somebody says a few moments later: "Hey, this is being recorded. We were just kidding about that."

Then I might point out that almost immediately our edition of the tape goes blank in midsentence, just runs out of voices in midsentence.

Now my question is this, it has to do with attitude, had you heard anything going on around the Agency where there were comparisons—and this occurred during the fall of last year—of this Stringfellow Program, or the Superfund Program to Watergate, or Stringfellowgate, or anything of that sort?

Ms. **Lavelle**. No, I have never heard such comparisons before.

Mr. **Levitas**. That was not something widely kicked around in the Agency?

Ms. **Lavelle**. No. But I probably was not in a position to hear a lot of the gossip and so forth. But no, I have never heard that allegation.

Mr. **Levitas**. Would you replay that one more time, Jack.

[Tape played a third time.]

Mr. **Levitas**. Let me ask you this. Had anybody ever reported this tape back to you and that conversation?

Ms. **Lavelle**. There was a lot I did not know about over there. No, I have never heard of this tape. In fact, I am the victim of a lot of taping, I think.

Mr. **Levitas**. What struck me is in the middle of a very detailed, complex discussion of scientific information, they get on talking about bringing the files together and what to do with them, that someone suggests why don't we burn them?

Do you have any suggestion as to why that might have been said? Did it have to do with any sensitivity about this particular matter?

Ms. **Lavelle**. Well, without naming the voices, because I would have to listen to it for quite a while, they sound like some of my program people, and all I can say is we were pretty exhausted of having to Xerox all this stuff and turn it over to enforcement, also get out a 418 list and meanwhile also clean up all these sites and push for enforcement, et cetera, et cetera, which the record shows we were doing. So I think it is just a human reaction. Most definitely our people turned everything over and they have been very diligent about doing what was asked of them and being very forthright, and I think it is an excellent characterization of the people in the program.

Mr. LEVITAS. The gentleman from New York, Mr. Molinari.

Mr. MOLINARI. In fairness to the members of the committee who have not had an opportunity to hear the tape in toto, I would like to make a request of the Chair that the committee have that tape transcribed and have it appended to the record in full. I couldn't make out any bit of what I heard there.

Mr. LEVITAS. If I may suggest—we will certainly do that, in fact the tape will be available for all members of the subcommittee to hear in full. It ran about 40 or 45 minutes, and I would suggest that the pertinent part after the scientific discussion might be more appropriately appended to the record rather than the whole 40 minutes.

Mr. MOLINARI. My concern, Mr. Chairman, is that when you take a portion of a tape, we may not be fair in drawing inferences from what might have been said unless it can be heard in light of the entire tape. We might get a better perspective of what they were trying to do. It might have been just a moment of levity and not something which may be so serious. So I would like to see the transcript of the entire tape, and I think each member of the committee should be afforded that opportunity.

Mr. LEVITAS. I will certainly have that tape available for every member of the subcommittee to hear, and I can assure you it will take a long time to transcribe that entire tape, but I have no problem with it.

[The information follows:]

NOTE.—The Subcommittee was subsequently advised by the EPA that publication of the content of the tape would potentially jeopardize the pending Stringfellow Acid Pits cleanup matter, and the tape's transcripts were therefore withheld from publication, and retained in the Subcommittee's files. The communication from the EPA in this regard follows:

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, March 1, 1983.

Hon. ELLIOTT H. LEVITAS,
Chairman, Subcommittee on Investigations and Oversight, Committee on Public Works and Transportation, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: On February 16, 1983, the Department of Justice released two tapes to your committee. The tapes were made of a meeting held in EPA's Region 9 offices on November 19, 1982. The purpose of the meeting was to critique the existing technical information on the Stringfellow site located in Glen Avon, CA. The tapes were made for a member of my staff who was working on the case, but who could not attend the meeting.

The meeting had been scheduled in anticipation of settlement negotiations with the generators who had sent hazardous substances to the Stringfellow site. EPA planned to meet with the generators on December 16, 1982, to review the Stringfellow technical data.

The meeting attendees included personnel from EPA's technical offices, the Department of Justice, the California State Department of Health Services, and the Ecology and Environment consulting firm (list of attendees attached). The technical experts had been instructed to "play the roles" of the consultants who had been hired by the generators and to point out flaws in the existing technical information. Many technical and evidentiary deficiencies contained in the site reports and sampling data were discussed.

The tapes contain technical information which would be very damaging if it were introduced in a trial for the recovery of the past State remedial action expenses. In order to avoid this damaging disclosure, I request that extreme care be taken not to make a public disclosure of those portions of the tapes with enforcement sensitive information. My office is available to identify those portions of the tape which we feel would jeopardize our enforcement case if released. Frederick Stiehl, Deputy Associate Enforcement Counsel—Waste, is available to discuss this matter prior to any release of the tapes or their contents. Your staff may contact Mr. Stiehl at 382-3050.

Sincerely,

ROBERT M. PERRY,
Associate Administrator and General Counsel.

Enclosure.

STRINGFELLOW TECHNICAL MEETING—NOVEMBER 29, 1982

LIST OF ATTENDEES

Laurel Chun—EPA Region 9 Program Office.
Kathleen Shimmin—EPA Region 9 Program Office.
Harlan Agnew—EPA Region 9 Office of Regional Counsel.
Barbara Grimm—EPA Office of Waste Programs Enforcement.
Michael RW Green—U.S. Department of Justice.
Alex Kennedy—California State Department of Health Services.
Stan Phillippee—California State Department of Health Services.
Reed Sato—Calif. State Dept. of Health Services—Legal.
John Moe—Ecology and Environment FIT Contractor.
Craig Saunders—Ecology and Environment FIT Contractor.
Tim Banister—Ecology and Environment FIT Contractor.

Mr. LEVITAS. The senior staff member on the minority side, I might add, Paul Yates, was present when Mr.——

Mr. MOLINARI. I understand, Mr. Chairman, I am just asking that eventually, I would like to see the transcript of that tape. I do not care if it is in 4 days, 1 week or 2 weeks.

Mr. LEVITAS. I do not have a problem with that at all. In fact, my reaction in listening to that portion of the tape was that it might very well have been simply levity at some point. I said earlier I didn't hear anything thus far which I consider to be sinister. I was asking the question in order to find out whether this was some type of banter going on around the Agency at the time for whatever reason.

Now you wanted to say something, Ms. Lavelle?

Ms. LAVELLE. I think Mrs. Johnson was asking.

Mr. LEVITAS. Excuse me, the gentlewoman from Connecticut.

Mrs. JOHNSON. Thank you, Mr. Chairman.

Along the same line, do you have information as to how long the meeting was? Does the tape represent the full length of the meeting, or did it begin before the tape. Did it go on after the tape? I think it would be appropriate to enter in the record the full length of the meeting and how much preceded the comment and how much followed.

Mr. LEVITAS. I expect to do that. That is very important. One of the things I found, when I listened to the tape, of interest was that the tape went along pretty well and I think there was one break in it but it was for about 7 seconds, it could have been when it was just mechanically being changed, but there did not seem to be a break in conversation. Shortly after this conversation there gets to be a series of problems on the tape and until it finally in mid-sentence, as I say, it stops, and we are in the process now of trying to find out whether it is the result of mechanical reproduction, or whether the original tape has the same deficiency, or just what, and we have our staff investigators checking into that matter right now, and it will be made part of the record. I think it should be.

NOTE.— Subsequent inquiry determined that the Subcommittee's copy of the original microcassette tape simply duplicated what was on that microcassette, which was itself, incomplete.

Ms. LAVELLE. Mr. Chairman, are you saying, just for my information here, are you saying that this tape was given to you how again? By the FBI agents?

Mr. LEVITAS. No, no, no.

Ms. LAVELLE. I missed that.

Mr. LEVITAS. Last Friday—last Wednesday afternoon in the course of meeting with Mr. Fielding, and Mr. Schmultz, and Ms. Dinkins when I arrived at the meeting I was—I saw a new face in the room who was engaged in conversation with Mr. Prolman on the subcommittee staff and I saw an envelope being opened and something handed over; it looked like two little minicassettes.

It really did not register with me what that was all about until later in the course of our discussions I was simply told that they had found—they, EPA—had found these two tapes of a meeting and of a discussion relating to one of the sites that we were looking at.

They wanted us to have them without any further delay.

Ms. Dinkins—Mrs. Dinkins, who had made the arrangements said she had not heard the tapes but just wanted to get them over. I said: "Why, what is the reason for that?"

She said: "Shredders are bad enough, we don't need tapes, too." I gather that is what it was.

Now whether anybody else at the Agency had actually listened to those tapes prior to them being turned over to us, I have no information. We are also trying to find that out.

Ms. LAVELLE. To go back to your question, I know of no wrongdoing at Stringfellow.

Mr. LEVITAS. Sometimes there gets to be a certain parlance around an agency or an office where some words have taken on specific meaning in connection with a matter, and those words on that particular tape just sort of hit me as why it was said.

Now, my own judgment is that it was a moment of levity at the end of a very long and strenuous, tension-filled discussion. That is my own assessment of it. But they were so engrossed to the situation that I was wondering whether you knew that this might have been some sort of banter that was being discussed in the Agency, and if so, I wanted to find out why.

That was the sole purpose of it.

The gentleman from New York.

Mr. MOLINARI. One question.

Ms. LAVELLE. Yes, sir.

Mr. MOLINARI. You have, during the course of the questioning, mentioned you were the victim of a lot of taping. What did you mean by that?

Ms. LAVELLE. There's tapes appearing now, I hear, you know, of things that I supposedly said or didn't say. I think Mr. Dingell is the one that is being given these. And it's just so sad that this whole approach over there is going on, notes and everything being leaked and the whole Agency is really crippled because of it, and I was anticipating coming today to get it on the table, discuss everything and let the Agency go on with their work.

Mr. MOLINARI. Did you learn of other tapes of yourself that you were not aware of? Is that what you meant when you made that statement?

Ms. LAVELLE. Well, my phone is being bugged, I've learned that.

Mr. MOLINARI. You verified that?

Ms. LAVELLE. I am in the process of verifying it now.

Mr. MOLINARI. You haven't verified it through any equipment?

Ms. LAVELLE. I have hand-held equipment, you screw it on, it lights up. So it has been a very interesting period in my life.

Mr. MOLINARI. I won't pursue anything further.

Mr. LEVITAS. Mrs. Johnson.

Mrs. JOHNSON. No questions.

Mr. LEVITAS. Mr. Roe.

Mr. ROE. No.

Mr. LEVITAS. I would like to express my appreciation to you, Ms. Lavelle. It will be our purpose to take a recess for about 10 minutes.

I think we can use it and ask Mr. Ingold—is he still here—if he would come forward and I think we can wrap up this in relatively short order after that. But your appearance has been extremely helpful to the subcommittee. I have learned a lot from what you have said. I think you have made some extremely telling points and have opened up a number of other avenues that we, I think, will be pursuing.

In addition, you have confirmed and corroborated by your testimony some of the most important concerns that I and some of the other members of this subcommittee had at the outset of all this business. So it is with appreciation that I wish to express to you that I think you have been a great deal of help to us in pursuing our investigation.

It might be useful for you, if your schedule permits, to remain while Mr. Ingold testifies, and perhaps while I do not at this time anticipate, maybe at some point down the line, after we have heard from some of the other EPA witnesses, administration witnesses, it may be appropriate for you to come back and respond or give us some further information to what they may be saying.

Ms. LAVELLE. Be glad to.

Mr. LEVITAS. Thank you very much.

Messrs. Bierbower, we appreciate your expertise.

Mr. JAMES BIERBOWER. Thank you, Mr. Chairman. It is a real pleasure to see the fairness with which you chair this committee here today. As a fellow lawyer, I can appreciate your expertise.

Mr. LEVITAS. Thank you very much. The subcommittee will stand in recess for 10 minutes and then we will hear from Mr. Ingold.

[Recess.]

Mr. LEVITAS. The subcommittee will please come to order. What I would like to do now is ask Mr. Ingold, Eugene Ingold, to come to the witness table.

He has been kind enough to stay around. Because his name has been bantered around in the press and during other testimony, I think it is altogether appropriate that we explore with him his role in this matter.

If you would, Mr. Ingold, I would like to administer the oath to you.

Do you solemnly swear the testimony you will give before the subcommittee today will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. INGOLD. I do.

Mr. LEVITAS. Thank you. Would you state your full name, your present occupation, and your title prior to your departure from the Environmental Protection Agency.

TESTIMONY OF EUGENE INGOLD, FORMER SPECIAL ASSISTANT TO THE ASSISTANT ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. INGOLD. Eugene Ingold. I was a special assistant to Ms. Lavelle, although my present occupation is, like hers, looking for a job.

Mr. LEVITAS. Mr. Ingold, let me advise you that if you so desire, you may have counsel represent you and participate in this with you. Do you understand?

Mr. INGOLD. Mr. Bierbower has kindly consented to sit on my left.

Mr. LEVITAS. Thank you, Mr. Ingold.

Let me ask you first to describe what your activities and responsibilities were when you were at EPA. When did you first come, how did you get there, what did you do?

Mr. INGOLD. I joined Ms. Lavelle shortly before she was confirmed, which would have been in March, and I worked for her as I had been RIF'd earlier from the Commerce Department, and I helped her on an informal basis temporarily, later became a consultant to her, and I joined her, originally as a writer, to write some material when she needed writing help.

I later got into a combination of administrative and writing functions. I did most of her speeches, correspondence, and so forth.

Mr. LEVITAS. How did you first meet Ms. Lavelle?

Mr. INGOLD. I was brought in by a mutual friend. She was looking for writing help and I was suggested and came in, and we got along.

Mr. LEVITAS. This was, it was, would have been, then, sometime in March or February 1982?

Mr. INGOLD. Shortly before her confirmation.

Mr. LEVITAS. Where was your office located with respect to her office at the Environmental Protection Agency?

Mr. INGOLD. Oh, I had a number of offices.

They would be nearby hers, not in her immediate office. There was a bay area, and I had several offices there at one time or another.

Mr. LEVITAS. The description of your activities, I take it, fall into the category of something like a sort of general-purpose special assistant. Did you get involved in any program areas with her?

Mr. INGOLD. Not directly, only insofar as I might have been called on to rewrite certain things that would have dealt in program areas or maybe handled correspondence dealing with programs. But, no, I didn't really participate in the program.

Mr. LEVITAS. Had you ever worked at the Environmental Protection Agency previously?

Mr. INGOLD. I had worked there once before back in the Russell Train era; I was the Acting Director of Public Affairs for 9 months.

Mr. LEVITAS. That is going to lead to another question outside of this, this chain of questions later on. But, now, in your working on speeches or doing writing for her, from whom did you generally receive your guidelines, input, your directions as to the substance of what it was you were going to produce in a speech or a letter or article or what have you?

Mr. INGOLD. I received general or broad guidelines from her always, well, not always, perhaps sometimes from another of her assistants, Warren Wood, but generally from her, and the specific material generally was something that I developed on the basis of what I knew about her policies and what she had said in the past and what the program people were telling me. And then I presented her with a staff paper, or a draft speech, or a press release, or whatever it was, for her approval.

Mr. LEVITAS. Did you ever sit down with her in the office or elsewhere and have discussions about the broad outlines or policy direction that she would like to have included in a speech or memorandum? You have to say yes or no, since nodding your head won't show in the record.

Mr. INGOLD. Yes.

Mr. LEVITAS. Let's direct our attention to this document which has been variously called talking points, or infamous memo, or what have you. And would you tell us about the genesis of that. What was your role in it? Where did it come from? What did you do?

Mr. INGOLD. About Christmastime, as I recall, I was told that she was going to or was seeking a meeting, kind of a year-end management meeting with the administrator, and I was asked——

Mr. LEVITAS. Who said that to you?

Mr. INGOLD. It is my recollection that Warren Wood told me. Rita says she did. I don't really remember that. But any rate, he asked me if I would start collecting information or points that she might want to bring up with the Administrator, and——

Mr. LEVITAS. The reason I am interrupting you, it might be helpful to both of you if I, at each point where you are getting to something critical, sort of fill in there, go back. Talking points that she might want to take up with the Administrator about what?

Mr. INGOLD. General management problems. I don't think it was more specific than that, general long-range problems. We had finished what we thought was a very good year, and we were starting a new one, and there were—I think everybody felt there were certain things that needed to be cleared up, and these were the problems that were suggested that she raise.

Mr. LEVITAS. OK. So what did you do?

Mr. INGOLD. Oh. So at that time there was, as she had said earlier, there was considerable discontent about Mr. Perry's operation, and documents were being leaked with regularity that were irritating, to say the least, the program people. And so I—Mr. Wood suggested late one evening, as I recall, that this ought to be a point that went in the talking paper.

And he gave me some handwritten notes, and we kind of brainstormed for a few minutes and I made a few notes, and I went back and I transcribed those the next day. I didn't do it immediately.

I transcribed those and that is the so-called memo. Those were the notes. I transcribed them on a Lexitron word processor, and I put them in my file where I was collecting talking points.

Mr. LEVITAS. OK.

Mr. INGOLD. Under normal circumstances I would remove those things from the disc after I transcribed them, but I didn't. I was in a hurry and I didn't do it.

Mr. LEVITAS. What was the next step as far as your use of either that disc or the transcription off of the disc?

Mr. INGOLD. The document? The next step was when Mr. Perry came to Ms. Lavelle and said that the New York Times had a copy of it, and she asked me about it. I have forgotten when this was. No, I beg your pardon, no, I had wiped it off in the meantime. I had removed it from the disc. That was sometime before that, maybe 10 days before that.

Mr. LEVITAS. Ten days before Mr. Perry came and said this is——

Mr. INGOLD. He said the New York Times is asking us about this, and we weren't sure what it was. But, of course, I thought that was possibly what it was.

So she came into the office I think a Monday or Tuesday morning, and said: "Can I have a copy of this thing?"

Mr. LEVITAS. Had he spoken to Ms. Lavelle yet at that point?

Mr. INGOLD. Oh, yes, and he had spoken to me and he was mentioning to her, I said: "Well, it doesn't sound like anything that I had done."

He was mentioning cases that I didn't have any knowledge of.

Mr. LEVITAS. All right. So between the time you had it transcribed, put on the disc, and Mr. Perry came to Ms. Lavelle and asked about it, did you ever discuss the content of that document with Ms. Lavelle?

Mr. INGOLD. No, no.

Mr. LEVITAS. Did you discuss the contents of that document with any other person at EPA?

Mr. INGOLD. I didn't discuss it with her.

As I said, I did it hurriedly, put it in the file, and in my haste did not remove from the disc. And I really didn't give it another thought, because the occasion of the meeting never arose. And consequently I didn't have any occasion to do anything with it.

Mr. LEVITAS. I asked Ms. Lavelle earlier why it would have been designated as something like memo to W.H., and the point I was making there is that I recognize that Bill Hedeman is one of her deputies down there, but is not the one who has primary interface with Mr. Perry, because Mr. Lucero would, and I was sort of surprised that it would be in a memo to W.H., if that means Bill Hedeman, as opposed to W.H., or E.L., Eugene Lucero, or one of the other names. In fact, I was even surprised that she would be directing a memo of that sort to any one of her deputies, and it was in the context of others interpreting W.H., meaning White House, as opposed to William Hedeman.

Mr. INGOLD. I type a lot faster than I think, and I shouldn't have said memo. If I did—I gather, I did—it should have been notes.

Bill Hedeman was mentioned because these all—precisely what you said—these things did come from enforcement, so I was making a note to myself to check with Bill Hedeman to see if he had any input for this particular phase of the talking points.

Mr. LEVITAS. OK, let me turn now to the document itself. I have already asked Ms. Lavelle about it, and how she—do you have a copy of this, by the way?

Mr. INGOLD. I have a copy that was given to me earlier today.

Mr. LEVITAS. OK. First of all, where did you get the information and the characterizations that appear on the first page of that document?

Mr. INGOLD. Well, I can't tell you specifically on any of these things, because, as I say, there were some notes I got from Mr. Wood, notes that I added in our conversation, and some were just things that I was aware of and typed out quickly on the word processor. And they were, of course, intended only for my own use, and I promptly threw the notes away.

Mr. LEVITAS. You also made reference to the fact that you received some notes from Mr. Wood.

Mr. INGOLD. That is correct.

Mr. LEVITAS. Now, do you recall where the idea came from that the Chem-Dyne settlement was viewed as a landmark settlement?

Mr. INGOLD. They came from those notes, obviously, and I don't know any more than that.

Mr. LEVITAS. Mr. Wood's notes you mean?

Mr. INGOLD. Right.

Mr. LEVITAS. Do you know if Mr. Wood generated those notes himself, or someone else?

Mr. INGOLD. I would think Mr. Wood would have gotten the notes the same way I would have, by listening to complaints from our enforcement people.

Mr. LEVITAS. All right. And what about the idea that Mr. Perry and his staff made efforts to scuttle those negotiations?

Mr. INGOLD. My answer would be the same on all those things. These are either notes that he gave me from things that he had heard or things I had heard and I can't differentiate now.

Mr. LEVITAS. I think there is much more significance to this document than the one that got focused on primarily in the press.

It is important to ask you about that statement: "He is systematically alienating the primary constituents of this administration, the business community." Where did you get that idea?

Mr. INGOLD. Well, I've thought about that quite a bit since I have been confronted with that every day in the paper, and, again, I don't recall.

It was something that apparently somebody had mentioned, and I put it down as a note, and I transcribed it. And I may say I don't know why I would have transcribed it that way, because I have been in the newspaper business or associated fields for many years and the first thing they tell you is not to write in superlatives or absolutes, and that is an absolute and I certainly would never have put that in a formal paper for her.

Mr. LEVITAS. But the concept, the idea, is it your statement that that concept or that idea which is recorded there was something that came to you from someplace else? It wasn't your view of the situation?

Mr. INGOLD. None of these were my views. I didn't look at it as my place to put my views into this thing. At this point I was merely recording things that I had received or heard or thought of, so that I would have them when I got ready to produce the document, the talking points.

Mr. LEVITAS. OK, on page 2 of this document, the first sentence on this page I think is pretty much self-explanatory. I think I know what it means:

"He wanted to hold up the 400-site national priority list because he hadn't seen it yet. He fails to consult with program offices, and their documents are handled arbitrarily."

Do you know what that last statement refers to?

Mr. INGOLD. My interpretation at the moment would be the problem I was referring to where so many items were leaked out of that office.

Mr. LEVITAS. The next one somebody explained to me several weeks ago, and I didn't understand it. So let me ask you.

It says: "Carney—set us up and didn't tell us until the last moment; bootlegged copies were the only thing that saved us. Going to use it to embarrass RML."

I assume RML is Ms. Lavelle. Who is Carney?

Mr. INGOLD. Obviously refers to Congressman Carney. I don't remember any specifics about that thing, and I don't know whether I knew much more than that.

It was a transcription of hurried notes that I took, and if I were going to use something like that, I would have had to go talk to the enforcement people before I could have written anything sensible.

Mr. LEVITAS. Do you know where you got that statement? It looks to me like somebody in a conversation said something, and you just copied it down.

Mr. INGOLD. I repeat: I got all these statements either from notes given me by Mr. Wood, or notes that I made in a conversation with him, or things that they triggered, you know, recollections that they triggered in my own mind.

Mr. LEVITAS. Do you have any recollection of what Mr. Wood or whoever you spoke to meant by saying "set us up"?

Mr. INGOLD. No, I don't at this point.

Mr. LEVITAS. Do you know what is meant by "bootlegged copies"? I know what a bootlegged copy is, but copies of what?

Mr. INGOLD. I don't recall, no, and I don't know. Maybe I didn't know at that time.

As I say, looking at that, I obviously couldn't have written anything about it without getting more information.

Mr. LEVITAS. "No advance information—either very incompetent or coup."

I have no idea what that means. Do you?

Mr. INGOLD. No.

Mr. **Levitas**. "Inconsistencies in approach to Hill on sensitive documents."

Did that refer to the dispute that was then going on between the subcommittee?

Mr. **Ingold**. That would be my guess.

Mr. **Levitas**. "Perry's friends are at Justice."

Do you know what that refers to?

Mr. **Ingold**. No, nothing specific again; just points that were made and I point them down.

Mr. **Levitas**. Finally, "Helping to set Gorsuch up. The things she needed to be protected were not there. No thinking, no planning. Failed to get any DOJ signatures on the contempt documents."

Do you have any recollection now of what would have fleshed out that paragraph?

Mr. **Ingold**. That was referring to the contempt situation and the documents that, it seems to me, there was discussion that he was not providing the proper legal backup to it.

Mr. **Levitas**. The sentence: "The things she needed to be protected were not there." By "things," are you referring to documents?

Mr. **Ingold**. Documents was my interpretation, as I recall.

Mr. **Levitas**. I will have some more questions but that, obviously, we are going to have to get much more deeply into that because that goes back to that whole integrity of the files issue.

Mr. Molinari.

Mr. **Molinari**. In listening to you, I get the impression that you don't have any independent recollection of just about everything that is contained in this two-page document. When was this put together?

Mr. **Ingold**. Put together, as I say, about the first of the year, as I recall.

Mr. **Molinari**. A little over a month and a half ago?

Mr. **Ingold**. Yes.

Mr. **Molinari**. I get the impression from you, since you don't seem to know anything about each item as the chairman took you down that list, that somebody might have been dictating this to you. Is that the fact?

Mr. **Ingold**. No. The fact is, as I said, I was given some notes and I made some notes.

Mr. **Molinari**. From Mr. Wood?

Mr. **Ingold**. Yes.

Mr. **Molinari**. Anybody else?

Mr. **Ingold**. Just Mr. Wood. I made some notes.

Mr. **Molinari**. In addition to some written notes he gave you in response to what he was verbalizing?

Mr. **Ingold**. Right, and put them down along with some things that I had been hearing around the office, and that is what they are.

Mr. **Molinari**. Let's get back to Mr. Levitas' question about the genesis of this document.

Who requested it? Who requested that you prepare this document?

Mr. **Ingold**. Nobody requested this. These were notes to myself. What Ms. Lavelle requested was talking points for her meeting with the Administrator.

It was agreed that one of the talking points would be about Mr. Perry and the problems that the enforcement people were having with Mr. Perry.

Mr. MOLINARI. What do you mean, "it was agreed"? Agreed by whom?

Mr. INGOLD. Mr. Wood and I. It was suggested; I think he suggested it, probably.

Mr. MOLINARI. You are indicating now that you had some decision making power yourself?

Mr. INGOLD. Well, I had power to present her with a draft of what I thought was important.

It was going to be her position to decide what she would do with it.

Mr. MOLINARI. Whose decision was it that the Administrator would have this meeting with Ms. Lavelle? Was it requested by Ms. Lavelle?

Mr. INGOLD. This was, as I understand it, requested by Ms. Lavelle. And, in fact, the meeting never came off.

Mr. MOLINARI. Yes. And who asked you to prepare talking points?

Mr. INGOLD. Ms. Lavelle says she asked me. I don't recall if she asked me directly, but Mr. Wood, I think, asked me to prepare talking points.

Mr. MOLINARI. Both of them?

Mr. INGOLD. I think it was Mr. Wood. If he did, he was reflecting her request.

Mr. MOLINARI. Well, there is not much here. If Mr. Wood was the author, why would he just simply dictate notes himself or talking points himself instead of giving them to you?

Mr. INGOLD. Because I did most of the writing for things that actually went to her. If I didn't do the writing, I did the editing.

Most of these things went through me.

Mr. MOLINARI. She was going to have a conversation with Mrs. Gorsuch and the thrust of that conversation was complaints that she had about Mr. Perry?

Mr. INGOLD. Not necessarily. It was going to be about a variety of things, I presume. This was one.

Mr. MOLINARI. The last statement, "helping to set Gorsuch up," was that Mr. Perry? Does that refer to Mr. Perry?

Mr. INGOLD. That refers to Mr. Perry, yes, sir.

Mr. MOLINARI. Replete throughout the first page are statements about Mr. Perry scuttling negotiations and taking credit for the successes that should perhaps have been attributed to Ms. Lavelle.

Yet you say that the main thrust of the agreement was not for her to go into Mrs. Gorsuch and complain about Perry?

Mr. INGOLD. The meeting was to deal with a number of management problems, and this was one problem, one of several that she was going to raise, I presume.

I collected other material, and in searching my memory, why, the only other thing I had, the only other point was a particular personnel matter that she was to raise with Mrs. Gorsuch.

Mr. MOLINARI. Was it your impression that Ms. Lavelle's activities were such that there was an emphasis on satisfying the regulated community?

Mr. **Ingold**. No, not at all.

Mr. **Molinari**. Did you get that impression from Mr. Wood when he was giving you these written notes? Where did all of this come from? For instance, one of the statements in here that was read to you earlier, that Chem-Dyne, agreement, is generally acknowledged as such in the regulated community as a landmark.

You mention yourself about the primary constituency of the administration being the business community, and yet we can't seem to identify who is responsible for the creation of these statements?

Mr. **Ingold**. It was, as I say, an amalgamation of notes and my own background on some of these things.

Some of these things on Chem-Dyne and Seymour I had been very active in preparing the documents, the press releases, factsheets and so forth. I was very familiar with those cases, so a lot of this background I knew about.

The part that was new to me was some of Mr. Perry's activities. And I put the two together, and those are my notes.

Mr. **Molinari**. Most of page 1 is about Mr. Perry, so I can assume from what you are telling us now is that this is information that came from a third party, and not from your own knowledge. Is that a fair statement?

Mr. **Ingold**. Anything that I knew about Mr. Perry came as a result of things I heard around the office. I didn't have any personal dealings with Mr. Perry.

Mr. **Molinari**. Let me try to cut this short.

How much of this did you write of your own independent knowledge from having worked for Ms. Lavelle?

Mr. **Ingold**. I can't really say. I suppose maybe one-third to one-half of it is things that I knew about, and the rest are notes, as I said, that came to me or things that I had heard and I made notes of.

Mr. **Molinari**. Did you put this on a computer?

Mr. **Ingold**. It is a word processor.

Mr. **Molinari**. Do you know if any portion of that was taken out, deleted, eliminated when it was transcribed?

Mr. **Ingold**. I don't know. When I transcribed this, I put it in the file.

I last removed the material from the word processor, along with some other things, when I wanted more space, and then this thing came up subsequently. So I know it is generally what I recall putting down, but, as I say, I don't know about writing "the primary constituents of the administration." It doesn't sound like that is something I would write.

Mr. **Molinari**. How long did you work for Ms. Lavelle before you prepared this?

Mr. **Ingold**. Approximately 10 months, 8, 9, I guess.

Mr. **Molinari**. Throughout that period of time you never heard of any dispute that was ongoing between Mr. Perry and Ms. Lavelle?

Mr. **Ingold**. Oh, certainly I was aware of the dispute.

I didn't know a lot about the details of the dispute. That just wasn't my area of activity. There wasn't anybody who was unaware of the dispute, and I want to say, it has been characterized as a feud, and so forth.

Ms. Lavelle was reflecting certainly the views of most of her enforcement people. That is where the information came from.

Mr. MOLINARI. Can you describe to me, Mr. Ingold, what the notes looked like that you were given by Mr. Wood?

Mr. INGOLD. They were some handwritten notes and I think on a piece of yellow paper.

Mr. MOLINARI. A piece of scratch paper?

Mr. INGOLD. Piece of scratch paper. After I transcribed them, I threw the notes away.

As I said, on that piece of paper, I added some hastily written notes of my own and that is why I transcribed it while it was fresh in my mind.

Mr. ROE. Will the gentleman yield?

Mr. MOLINARI. Sure.

Mr. ROE. Did you transcribe the notes from Mr. Wood pretty much as he had said them or written them, do you know?

Mr. INGOLD. No; as I was saying on Chem-Dyne and Seymour, these notes here reflect probably not only what I had written on paper but my background knowledge of the cases.

Mr. ROE. Did you leave anything that Mr. Wood had said out of this memorandum?

Mr. INGOLD. Not that I recall. It was my interpretation of a conversation and handwritten notes.

Mr. ROE. You didn't abrogate anything Mr. Wood said? You put down pretty much what he had said or had written on his notes?

Mr. INGOLD. Yes.

Mr. ROE. You didn't alter them?

Mr. INGOLD. No.

Mr. MOLINARI. You did actually prepare those talking points?

Mr. INGOLD. No, I didn't prepare any talking points.

Mr. MOLINARI. I am just about to conclude with my questions. Since you don't know anything independently about the notes, particularly those that are on page 2, because they are sitting here by themselves without any explanation, how were you going to prepare talking points surrounding these things if you didn't have any independent knowledge about what they were?

Mr. INGOLD. I would have had to go to the program people, and I probably would have prepared a draft, taken it to them to see what they had to say, and get their comments and then given it to Ms. Lavelle for her consideration.

Mr. MOLINARI. Thank you, no further questions.

Mr. LEVITAS. Mr. Roe, the gentleman from New Jersey, any questions?

Mr. ROE. Well, I don't know whether I really have anything further to add, Mr. Chairman.

I wanted it clear for the record that Mr. Ingold had transcribed this data in measure from Mr. Wood who had written it down and then you threw away his notes. You did not alter Mr. Wood's notes or ideas, you just copied them down?

Mr. INGOLD. I probably expanded on them.

Mr. ROE. In substance he had some of these things to say.

Mr. INGOLD. Sure.

Mr. ROE. You put it together and put it down on paper?

Mr. INGOLD. Yes.

Mr. LEVITAS. Does this document, to the best of your recollection, represent the extent of what you put into the word processor or was there more?

Mr. INGOLD. No, that is the extent of it.

Mr. LEVITAS. The first page certainly down through Waukegan Harbor, you were being more descriptive, you fleshed it out more and on the second page it gets to be little bullets.

Was that just—you had done the first part and you didn't get back to the second part?

Mr. INGOLD. I recall Chem-Dyne and Seymour were two cases I was familiar with so I could add some observations of my own in there. Waukegan Harbor I wasn't familiar with.

The other things were notes or ideas that were triggered by the discussion I had, and were little handwritten notes which were transcribed.

Mr. LEVITAS. That sentence we seem to get back to from time to time, "He is systematically alienating the primary constituents of this administration, the business community."

That is not something you would have said?

Mr. INGOLD. I don't think I would have said the "primary constituencies." From an editorial standpoint, I wouldn't have done it that way.

Mr. LEVITAS. We will get around to asking Mr. Wood about that because at some point, some place, the philosophy that is expressed in here came from someplace.

It didn't just like the shredders, appear at the Agency. It came from someplace. Somebody said, you know, this is the approach, this is the concern, this is the philosophy, and I went over it very carefully with Ms. Lavelle earlier today, expressing my concerns that the public interest or public health or environmental concerns are never mentioned as any part of a criterion for determining or measuring success or accomplishment, and maybe Mr. Wood can shed some light on that.

Who exactly is Mr. Wood, and what job and position did he hold?

Mr. INGOLD. Mr. Wood is like the rest of us, unemployed at the moment. He acted as chief of staff for Ms. Lavelle.

Mr. LEVITAS. We will be in touch with Mr. Wood and see if we can get into this a little bit further.

Your testimony, I must say, has been extremely enlightening as far as this is concerned. If one is to take Ms. Lavelle and Ms. Gorsuch Burford at their word, and I am sure on this subject there is no reason not to; this document was used as the basis for her firing.

Mr. INGOLD. It was indeed, apparently.

Mr. LEVITAS. I am sure you are somewhat surprised at that?

Mr. INGOLD. To say the least.

Mr. LEVITAS. Finally, just by way of conclusion, and having I don't suppose anything to do with this but I was intrigued when you said that you formerly worked at EPA a number of years ago when Mr. Train was there. Were you there when Mr. Ruckleshaus was there?

Mr. INGOLD. When I joined the Agency, Fri was the Acting Administrator and then Train came in.

Mr. **Levitas**. How would you characterize the difference in the Agency overall philosophically, mission-wise, from Mr. Train's day to your return to the Agency?

Mr. **Ingold**. That is a mighty broad question.

Mr. **Levitas**. You are in a unique position.

Mr. **Ingold**. I can give you a thumbnail view of my view of the Agency.

It was in 1973. I assumed it was going to be a real up and coming agency, because it was a new agency and I had had some experience in the past, and similar agencies, and I said, this is going to be a really good agency and it was a mess management wise and every other way; and when I came back last year, I said, well, I am sure it has matured and a lot of these problems have been solved—and it is a bigger mess.

Mr. **Levitas**. Thank you very much. We appreciate your participation today and I hope it hasn't inconvenienced you, but I can assure you that what you have said is extremely helpful.

Mr. **Ingold**. May I just say one thing, Mr. Chairman.

Mr. **Levitas**. By all means.

Mr. **Ingold**. Granted, these are public, everybody in town has copies.

I would like it to be kept in mind, because I am a professional writer, and assume I do a reasonably good job at my trade, these were notes made to myself not intended for anyone, Ms. Lavelle or anybody else; they were reminders to me about something I assumed I would have to write in the future.

I do this dozens of times a day on unrelated things, things I know nothing about, and I am called in to do something on an emergency basis and I try to work it out as best I can; and so they were transcribed in that context and I just want to make that plain; that, you know, I am not defending anything that is on this page any more than anybody else.

Mr. **Levitas**. I think it is appropriate for you to make that very clear as to what these notes were and for the reasons that have been alluded to earlier, I think that this is an extremely important link in the chain of information from our point of view.

From your point of view, I think you have made it very clear what you intended these notes to be, and obviously they took on a life much bigger than you ever intended.

Mr. **Ingold**. Sure did.

Mr. **Levitas**. All right, thank you very much, Mr. Ingold.

If there is no further business to come before the subcommittee today, and I made the announcement about the documents tomorrow, I will then declare that the subcommittee shall stand adjourned, subject to the call of the Chair.

[Whereupon, at 5:05 p.m., the subcommittee adjourned, subject to the call of the Chair.]

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